(8)

No. 90-967-CFX
Status: GRANTED

Title: Guy Wooddell, Jr., Petitioner
v.
International Brotherhood of Electrical Workers, Local 71, et al.

Docketed:
December 12, 1990

Court: United States Court of Appeals for the Sixth Circuit

Counsel for petitioner: Meckler,Theodore E.

Counsel for respondent: Cloppert Jr.,Frederick G.

112690 ext until 121390 by Stevens, J.-CITED

Entry	Date	Note	Proceedings and Orders
1	Nov 23 1990	G	Application (A90-395) to extend the time to file a petition for a writ of certiorari from December 3, 1990 to December 13, 1990, submitted to Justice Stevens.
2	Nov 26 1990		Application (A90-395) granted by Justice Stevens extending the time to file until December 13, 1990.
3	Dec 12 1990	G	Petition for writ of certiorari filed.
4	Jan 10 1991		Brief of respondents Intl. Bhd. Local 71, et al. in opposition filed.
5	Jan 16 1991		DISTRIBUTED. February 15, 1991
6	Feb 19 1991		Petition GRANTED. limited to Questions 1 and 2 presented by the petition. **********
7	Mar 21 1991		The order entered February 19, 1991, is modified to read as follows: The petition for a writ of certiorari is granted limited to Question I presented by the petition. In addition, the parties are directed to brief and argue the following question: "Does Section 301 of the Labor Management Relations Act create a federal cause of action under which a union member may sue his union for violation of the union constitution?"
8	Apr 22 1991		Joint appendix filed.
9	Apr 22 1991		Brief of petitioner Guy Wooddell filed.
10	Apr 22 1991	G	Motion of Association for Union Democracy, et al. for leave to file a brief as amici curiae filed.
11	May 13 1991		Motion of Association for Union Democracy, et al. for leave to file a brief as amici curiae GRANTED.
13	May 17 1991		Order extending time to file brief of respondent on the merits until June 7, 1991.
14	Jun 7 1991		Brief of respondents Internatl. Brotherhood of Electrical Workers Local 71, et al filed.
15	Jul 5 1991	G	Application (A91-25) to extend the time to file a reply brief from July 11, 1991 to July 25, 1991, submitted to Justice Stevens.
16	Jul 10 1991		Application (A91-25) granted by Justice Stevens extending the time to file until July 25, 1991.
17	Jul 12 1991		CIRCULATED.
18	Jul 19 1991		SET FOR ARGUMENT WEDNESDAY, OCTOBER 16, 1991. (3RD CASE)
19	Jul 22 1991	X	Reply brief of petitioner Guy Wooddell,Jr. filed.
20	Jul 24 1991		Certified copy of Court of Appeals proceedings received.

No. 90-967-CFX

Entry	Date	Note	Proceedings and Orders
21	Aug 21 1991		Record filed.
		*	Received record (not certified) from USDC S.D. OH.
22	Oct 16 1991		ARGUED.

(1)

90-967

NO. 90-_____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

GUY WOODDELL, JR.,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS For the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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December, 1990

QUESTIONS PRESENTED FOR REVIEW

I. Is a union member who sues his union and its officials for violations of his free speech rights under Title I of the Labor Management Reporting and Disclosure Act, and who seeks punitive and compensatory damages, entitled to a trial by jury under the Seventh Amendment?

II. Does federal law permit a union member to sue to enforce his union's constitution, and, if so, does Section 301 of the Labor Management Relations Act govern the interpretation of the union constitution and require the application of uniform principles of federal law to determine the meaning of the union constitution and the remedies available for its violation?

PARTIES TO THE PROCEEDING

The parties to this proceeding are Petitioner, Guy Wooddell, and Respondents, International Brotherhood of Electrical Workers, Local Union No. 71 (hereinafter, "Local 71"), R.L. "Buck" Wooddell (hereinafter, "Respondent, Wooddell"), and Gregory Sickles (hereinafter, "Respondent, Sickles").

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IN THE SUPREME COURT OF THE UNITED STATES
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No. 90-_____

GUY WOODDELL, JR.,

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INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, et al.,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS For the Sixth Circuit

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Guy Wooddell, Jr. petitions the Court to grant a writ of certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit which affirmed the denial of Petitioner's right to a jury trial on his free speech claims and the dismissal of Petitioner's breach of contract claims.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is repro-

duced at pages A-1 to A-21 of the Appendix ("App. A-1 to A-21"). The order of the court of appeals denying rehearing is reproduced at App. A-22. The opinions of the United States District Court for the Southern District of Ohio are reproduced at App. A-24 to A-36, A-37 to A-41, and A-42 to A-63.

JURISDICTIONAL GROUNDS

The United States Court of Appeals for the Sixth Circuit issued its opinion on June 27, 1990. That court denied the Petition for Rehearing on September 4, 1990. App. A-22. One extension of time in which to file this Petition was granted by the Honorable Justice John Paul Stevens on November 26, 1990 extending the time for filing until December 13, 1990.

This Court has jurisdiction under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

The Seventh Amendment to the United States Constitution:

Trial by jury in civil cases

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Section 301 of the Labor-Management Relations Act, 29 U.S.C. Section 185:

Suits by and against labor organization

(a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the

United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent - Entity for purposes of suit - Enforcement of money judgments. Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction. For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process. The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency. For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his

acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Section 101 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. Section 411:

Bill of Rights; constitution and bylaws of labor organizations

(a)(1) Equal Rights. Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such organization's constitution and bylaws.

(2) Freedom of speech and assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express

any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, initiation fees, and assessments. Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date

of enactment of this Act [enacted Sept. 14, 1959] shall not be increased, and no general or special assessment shall be levied upon such members, except -

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each

local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: Provided, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) Protection of the right to sue. No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as

defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing procedures (not not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: And provided further, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) Safeguards against improper disciplinary action. No member of any labor organization may be fined, suspended, ex-

pelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b)(1) Invalidity of constitution and bylaws. Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

Section 101 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. Section 412:

Civil action for infringement of rights; jurisdiction Any person whose rights secured by the provisions of this title [29 U.S.C. Sec. 411, et seq.] have been infringed by any violation of this title [29 U.S.C. Sec. 411, et seq.] may bring a

civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

STATEMENT OF THE CASE

A. STATEMENT OF FACTS

Petitioner, Guy Wooddell, Jr., is a member in good standing of Respondent, International Brotherhood of Electrical Workers, Local Union No. 71. Respondent, Buck Wooddell was, at all relevant times, the President of Local 71. Respondent, Gregory Sickles has been the Business Manager of Local 71 since October 14, 1985.[1]

1. Petitioner, Guy Wooddell, Jr., and Respondent, Buck Wooddell, are also brothers.

This dispute concerns the treatment of Petitioner by the Respondents. The trouble between the parties became apparent in January 1986 when Petitioner openly opposed an announced union dues increase. In previous years, Petitioner had been opposed to the selection of Respondent, Sickles as the business manager of the local and to the selection of other officers as well. After hearing of Petitioner's outspoken opposition to the dues increase, Respondent, Wooddell telephoned Petitioner. The conversation quickly became hostile. Respondent, Wooddell told Petitioner that if he persisted in his opposition to the dues increase, he would be "finished" in the union.

Shortly after this conversation, Respondent, Wooddell filed internal union charges against Petitioner. On February 24, 1986 Local 71 sent Petitioner a notice informing him that he was to appear at a

hearing before the board on March 14, 1986.

On March 14, 1986 Petitioner, after consulting an attorney, appeared before the board without counsel. At the hearing, the charges were read. Afterward, Petitioner was asked if he were guilty of the charges. He said no. The two brothers then began shouting at each other and Petitioner left. No decision was ever rendered on the charges.

After Petitioner's opposition to the dues increase, Respondents discriminated against him with respect to job referrals. Local 71 operated a hiring hall referral system. The referral system operated by priority groups.

Under the referral procedures, each member is to be registered in the highest priority group in the classification for which he qualifies. Petitioner fulfilled the requirements of the highest priority

group for Journeymen Linemen, known as Group I. Members are supposed to be referred to work in the order in which they signed up on the out of work list. Group I members are to be referred out before any Group II members. Group II members are to be referred out before any Group III members, and so on down the line.

Members who were qualified only for a lower priority group, or who were not ahead of Petitioner on the out of work list were referred to employers for employment before Petitioner. Petitioner continued not to be referred out for work. It is his contention that the reason for this lack of referrals was his outspoken opposition to the dues increase. After the complaint was filed in this case, Petitioner received a couple of referrals. However, these were for much lower paying jobs with far less desirable working conditions than the referrals received by

those who did not oppose the dues increase.

No attempts were made to refer Petitioner to another job by Local 71 until January 19, 1987, well after this action had been filed. By that time, he had already committed himself to a job in New Jersey. He had obtained that job himself.

B. PROCEEDINGS IN THE DISTRICT COURT

Petitioner brought suit on July 25, 1986 under Title I of the Labor Management Reporting and Disclosure Act (LMRDA, 29 U.S.C. Sec. 411 et seq.), Section 301 of the Labor Management Relations Act (LMRA, 29 U.S.C. Sec. 185), 28 U.S.C. Sec. 1331, and the pendent powers of the District Court.

Petitioner alleged that 1) he engaged in internal union political activities protected by the Bill of Rights of the Labor Management Reporting and Disclosure Act (29 U.S.C. Sec. 411, et seq.) and was

economically discriminated against and disciplined in retaliation for such activity; 2) Respondents' conduct violated the Constitution of the International Brotherhood of Electrical Workers, including the requirements for substantive and procedural protections to be afforded to members against whom internal union charges have been filed and the requirement that local unions live up to the terms of their collective bargaining agreements with employers, thus amounting to a breach of contract under either Sec. 301 of the Labor Management Relations Act (29 U.S.C. Sec. 185) or state law; and 3) Respondents' actions amounted to intentional interference with Petitioner's contractual relations in violation of state law.[2] Peti-

2. There was also a breach of the duty of fair representation claim in this case that was dismissed, but not pursued on appeal.

tioner sought injunctive relief, lost wages, lost fringe benefits, compensatory damages, punitive damages, and reasonable attorneys fees. Petitioner demanded a jury trial.

Petitioner's case was dismissed without trial by the district court in piecemeal fashion. He was also denied the right to a jury trial. First, on March 21, 1988, the district court dismissed Petitioner's Sec. 301 breach of contract claims. App. A-33 to A-36. Second, on August 29, 1988, the district court, in an in chambers decision, denied Petitioner the right to a jury trial on his LMRDA claims. App. A-39 to A-40. Third, on October 19, 1988, the district court dismissed Petitioner's LMRDA free speech claims. App. A-58 to A-62. As a result of these orders, Petitioner's entire case was dismissed without a trial.

C. PROCEEDINGS IN THE COURT OF APPEALS

The Court of Appeals for the Sixth Circuit affirmed in part and reversed in part on June 27, 1990. App. A-1 to A-21. In this decision, the court reversed the district court's dismissal of Petitioner's claim that he was deprived of work in retaliation for his outspoken opposition to the dues increase, which was premised upon LMRDA. The court of appeals affirmed the district court's rulings in all other respects. Thus, the court of appeals determined that Petitioner enjoyed no right to a jury trial. The court relied exclusively upon its prior decision in McCraw v. United Ass'n of Journeymen, 341 F.2d 705, 709 (6th Cir. 1985) to reach that conclusion.

The court also determined that Petitioner had no right to pursue a federal claim under Section 301 of LMRA for Local 71's violations of the union constitution.

The court of appeals was cognizant of this Court's decision in United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada v. Local 334, 452 U.S. 615 (1981). However, the court chose to strictly adhere to its prior decision in Trail v. Int'l Brotherhood of Teamsters, 542 F.2d 961, 968 (6th Cir. 1976) in rendering its determination on this issue.

At the same time, the court held that claims brought under union constitutions are exclusively the creatures of federal law. As such, the court determined that pendent state claims may not be a vehicle for resolving such disputes. On September 4, 1990 the court of appeals denied Petitioner's Petition for Rehearing. App.A-22.

REASONS RELIED ON FOR ALLOWANCE OF A WRIT

I. THE COURT OF APPEALS DECISION IS IN CONFLICT WITH THE DECISIONS OF SEVERAL OTHER COURTS OF APPEAL AND WITH RECENT DECISIONS OF THIS COURT AND DECIDES AN

IMPORTANT ISSUE OF FEDERAL LAW WHICH HAS NOT, BUT SHOULD BE, DECIDED BY THIS COURT.

A writ of certiorari should be granted in this case because, in several respects, the court below decided federal questions in a way which directly conflicts with the decisions of several other courts of appeals. It also is in conflict with a recent decision of this Court. Moreover, the questions presented here - the right to a jury trial in free speech cases under LMRDA and the right of members to sue under uniform principles of federal law to enforce their union constitution - are important questions of federal law that should now be resolved by this Court.

A. THE JURY TRIAL ISSUE.

In denying Petitioner a jury trial on his claim for employment related retaliation under LMRDA, the lower courts relied exclusively upon McCraw v. United Assoc. of Journeymen, 341 F.2d 705, 709 (6th Cir.

1965). The decision of the court of appeals affirmed the district court's decision on this issue seeing "no reason to disturb McCraw." App. A-20.

Every other Circuit which has considered the specific issue of a right to a jury trial under LMRDA disagrees with the view of the Sixth Circuit as expressed in McCraw and reaffirmed in this case. Quinn v. DiGuilian, 739 F.2d 637, 645-46 (D.C. Cir. 1984); Feltington v. Motion Picture Operators Local 306, 605 F.2d 1251, 1257 (2d Cir. 1979), cert. den. 446 U.S. 943 (1980); Simmons v. Avisco, Local 713, 350 F.2d 1012, 1018 (4th Cir. 1985); Int'l Brotherhood of Boilermakers v. Braswell, 388 F.2d 193 (5th Cir. 1968), cert. den. 391 U.S. 935 (1968).

This split in the Circuits should now be resolved by this Court. This is a question which requires the Seventh Amendment to the United States Constitution to be

properly interpreted. It involves a statute which codifies the national interest in protecting a union member's free speech rights. Reed v. United Transportation Union, __U.S.___, 109 S.Ct. 621, 630 (1989).

While the Court has not specifically decided whether an LMRDA plaintiff has a right to a jury trial, it has recently addressed the right to a jury trial in a very similar context. Teamsters Local 391 v. Terry, 494 U.S. ____, 100 S.Ct. 1339, 108 L.Ed.2d 519 (1990). As Petitioner now argues, the analytical framework for determining whether there is a right to a jury trial which the Court employed in Terry, but which the lower courts ignored in favor of prior circuit precedent, plainly establishes the right to a jury trial in LMRDA cases. The implicit conflict between the decision below and Terry is another reason why review should be granted.

Terry presented the question of whether an employee who seeks relief in the form of back pay for a union's alleged breach of its duty of fair representation in a hybrid Section 301 LMRA case has a right to a jury trial. The Court noted that "any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." Terry, supra, 110 S.Ct. at 1345, citing Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 501 (1959); and Dimick v. Schiedt, 293 U.S. 474, 486 (1935).

In Terry, the Court analyzed the issue in terms of whether the particular action would resolve legal rights. To make such a determination, the Court employed the traditional two-part test:

> "First, we compare the statutory action to 18th century actions brought in the courts of England prior to the merger of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature."

> Tull v. United States, 481 U.S. 412, 417-418 (1987) (citations omitted). The second inquiry is more important in our analysis.[3] Granfinaciera, S.A. v. Nordberg, 492 U.S. ____, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989).
>
> Terry, supra, 110 S.Ct. at 1345.

In answering the first inquiry referred to as "preliminary," the Court analogized the breach of the duty of fair representation action to a claim by a trust beneficiary against his trust. The Court found that the Terry plaintiffs' action encompassed both legal and equitable issues. The instant case certainly encompasses legal issues. It is, perhaps, arguable that it may also encompass equitable issues. As

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3. Justice Brennan's concurring opinion in Terry argues that the time has come to dispense with historical inquiry altogether. He would decide Seventh Amendment questions solely on the basis of the relief sought.

Terry teaches us, that potential duality clearly should not deprive Petitioner of the guarantees of the Seventh Amendment.

In Reed v. United Transportation Union, ___ U.S. ____, 109 S.Ct. 621 (1989), the Court looked at Title I of LMRDA for the purpose of determining the proper statute of limitations to apply to such actions. The Court found that:

> Because Sec. 101(a)(2) protects rights of free speech and assembly, and was patterned after the First Amendment, it is readily analogized for the purpose of borrowing a statute of limitations to state personal injury actions. Id. 109 S.Ct. at 626.

Certainly, a personal injury action is the type of action that could have been brought in a court of law in 19th century England. Thus, whether classified as a trust action as in Terry or as a personal injury action as in Reed, the claims raised herein give rise to the protections of the Seventh Amendment.

The second and most important part of this Court's inquiry in Terry focused on the nature of the remedy sought. The Terry plaintiffs sought compensatory damages, representing back pay and benefits. This Court found that:

> The back pay sought by respondents is not money wrongfully held by the union, but wages and benefits they would have received from McClean had the union processed the employees' grievance properly.
>
> Terry, supra, 110 S.Ct. at 1348.

This is precisely the type of relief that the Petitioner seeks in this case. His assertion of a right to a jury trial is made even stronger by virtue of his request for compensatory and punitive damages. In Terry, this Court found that the remedy of back pay was legal in nature and that Plaintiffs were entitled to a jury trial under the Seventh Amendment. Id, 110 S.Ct. at 1349. A similar result should ensue in this case.

The analytical framework enunciated in Terry is equally applicable to this case. The court of appeals decision conflicts with the Terry analysis. In contrast to Terry, the Sixth Circuit decided, in McCraw and in the instant case, that there was no right to a jury trial because a free speech LMRDA case is a statutory claim which was not specifically recognized at common law when the Seventh Amendment was enacted. McCraw, supra at 709. The court made no attempt to compare the LMRDA claim to traditional common law claims. The court also failed to determine whether the remedy sought was legal or equitable in nature. The analysis employed by the court of appeals directly contradicts that which was enunciated in Terry.

For all of the above reasons, Petitioner is entitled to a jury trial on his LMRDA claims. The lower court decision overlooked and/or misapprehended the above

specified law. A writ of certiorari should be granted to address the important issue of a right to a jury trial in cases such as this, particularly in light of the split between the Circuits and this Court's determination in Terry.

B. THE ENFORCEMENT OF UNION CONSTITUTIONS.

The decision below effectively holds that union members have no way of enforcing their union constitutions, under either state or federal law. Thus, the courts held both that union constitutions may not be enforced under Section 301 of the LMRA, and that such constitutions may not be enforced under state contract law. Certiorari should also be granted to consider whether federal law allows members to bring such actions and, if so, whether the enforcement of union constitutions should be governed by federal law.

Both of the lower courts relied on Trail v. Teamsters, 542 F.2d 961, 968 (6th Cir.

1976) where the Sixth Circuit had held, in disagreement with several other circuits, that members may not sue to enforce a union constitutional requirement requiring collective bargaining agreements to be ratified by the union membership.

The continuing viability of Trail has been called into serious question by virtue of this Court's decision in United Ass'n. of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada v. Local 334, 452 U.S. 615 (1981). In Journeymen, supra at 622, this Court held that a union constitution is a contract between labor organizations within the meaning of Section 301 of LMRA (29 U.S.C. Sec. 185). As a consequence, suits between labor organizations for the enforcement of the constitution are within the jurisdiction of the federal courts, and the substantive law to be applied in such suits is federal law.

As the lower court noted, in Journeymen this Court chose not to specifically decide whether an individual union member may sue his union for violating the union constitution. (See Journeymen, supra, at 627, n.16.) Most of the decisions of the courts of appeal which have considered this issue have held, contrary to the decision below, that union members, as well as union entities, may sue to enforce union constitutions under Section 301. Lewis v. Int'l Brotherhood of Teamsters, Local 771, 826 F.2d 1310 (3d Cir. 1987); Kinney v. Int'l Brotherhood of Electrical Workers, 669 F.2d 1222, 1229 (9th Cir. 1981); Pruitt v. Carpenters Local Union No. 225, 893 F.2d 1216, 1218-19 (11th Cir. 1990); DeSantiago v. Laborers Int'l Union, Local 1140, 914 F.2d 125 (8th Cir. 1990); see also Abrams v. Carrier Corp., 434 F.2d 1234 (2d Cir. 1970).

However, a number of courts still follow a rule similar to that enunciated by the Sixth Circuit in Trail, finding such suits to be outside the parameters of Sec. 301. Parks v. Int'l Brotherhood of Electrical Workers, 314 F.2d 886 (4th Cir. 1963), cert. den. 372 U.S. 976 (1963); Adams v. Int'l Brotherhood of Boilermakers, 262 F.2d 835 (10th Cir. 1958).

The Fifth Circuit has taken yet another view requiring that there be a "significant impact" upon labor relations before such suits may be recognized under Sec. 301. Alexander v. Int'l Union Operating Engineers, 624 F.2d 1235, 1238 (5th Cir. 1980).

The district courts have had a difficult time grappling with this issue. Several cases have held that a union member may sue his union under Sec. 301 for violations of the union constitution. Doby v. Safeway Stores, Inc., 523 F.Supp. 1162,

1166 (E.D. Va. 1981); Davis v. American Postal Workers Union, 582 F.Supp. 1574 (S.D. Fla. 1984); Legutko v. Local 816 Int'l Brotherhood of Teamsters, 606 F. Supp. 352 (E.D. N.Y. 1985); National Association of Basketball Referees v. Middleton, 688 F. Supp. 131 (S.D. N.Y. 1988); Fraser v. James, 655 F.Supp. 1073 (D. Vir. Isl. 1987); Skipper v. Hoff and Assoc., 684 F.Supp. 707 (S.D. Ga. 1987); Gable v. Local Union No. 387, 695 F.Supp. 1174 (N.D. Ga. 1988). However, other district court decisions have agreed with the opposite view. Frenza v. Sheet Metal Worker Ass'n., 567 F.Supp. 580, 585 (E.D. Mich. 1983); Werner v. McLean Trucking Co., 627 F.Supp. 203 (S.D. Oh. 1985); Petrowski v. Kilroy, 609 F. Supp. 220 (E.D. Pa. 1985); Finnie v. District No. 1 - Pacific Coast Dist., Etc., 538 F.Supp. 455 (N.D. Cal. 1981)

In this case, the court of appeals chose not to analyze the impact of Journeymen upon Trail, relying instead upon this Court's decision not to decide the specific issue now before this Court, i.e., whether or not Sec. 301 of LMRA allows for suits by union members against their union for alleged violations of the constitution. (Journeymen, supra at 627, n.16.) That specific issue was not before this Court in Journeymen. It is now before this Court and ought to be squarely addressed.

There are three reasons why the decision below cannot be reconciled with this Court's decisions under Section 301 and, in particular, with the analysis of Journeymen. First, this Court has long recognized that an individual union member can enforce his rights under Section 301 contracts. Smith v. Evening News Ass'n. 371 U.S. 195 (1962). There is no reason on the face of the statute or under the princi-

ples of federal labor law why an individual employee should be permitted to sue to enforce an agreement between a labor organization and an employer, but not an agreement between two labor organizations. Thus, read together, Smith and Journeymen strongly suggest that a union member's suit alleging violations of a union constitution is actionable under Sec. 301.[4]

The second reason why the decision below is inconsistent with Journeymen is

4. After all, Sec. 301 applies to all "suits for violations of contracts between an employer and a labor organization affecting commerce ... or between any such labor organizations." This Court has "not taken a restrictive view of who may sue under Sec. 301 for violations of such contracts." Franchise Tax Bd. v. Laborers Vacation Trust, 463 U.S. 1, 25, n. 28 (1983).

that suits seeking to enforce union constitutions involve issues of labor law and labor relations that "peculiarly call(s) for uniform law." Teamsters Local v. Lucas Flour, 369 U.S. 95, 103 (1962). This case involves violations of the constitution of an international union. It would certainly seem desirable from a policy perspective to have adjudications involving such issues made uniformly in the federal courts rather than haphazardly in the courts of all fifty (50) states. Such uniformity would be consistent with long established principles in the area of labor relations law.

This Court has observed that in cases involving union constitutions, "the substantive law to be applied 'is the federal law, which the courts must fashion from the policy of our national labor laws'." Journeymen, supra at 627, citing Textile Workers v. Lincoln Mills, 353 U.S. 448,

456 (1957). This policy should be applied in this case.

Third, in light of this Court's holding in Journeymen that union constitutions are enforceable under Section 301 when a union is a plaintiff, the effect of holding that they are not enforceable under Section 301 when an individual member is a plaintiff will be that the applicability of federal law principles, and federal jurisdiction, will depend on the identity of the plaintiff.

The inevitable result of this holding will be that the same clause of the same constitution may be given different meanings, depending on the identity of the plaintiff in a particular case. For the same reasons, the remedies for the same sort of violation of any given provision will also be different, depending on who happens to be the plaintiff. Consequently, those who seek to enforce a union consti-

tution could shop for the most favorable forum by the simple ruse of manipulating the plaintiffs in whose name contract enforcement is sought, thus enabling the action to be brought in state court under state law, or in federal court under federal law. The possibility of differing meanings and remedies, based on the identity of the plaintiff and, thus, the choice of forum, would create an intolerable uncertainty about the meaning and effect of union constitutions that would surely undermine stable labor relations.

In summary, since Journeymen was decided, the lower courts have continued to struggle with the question of whether union members should be able to sue under federal law to enforce union constitutions. Because the Sixth Circuit has decided to adhere to Trail, it is apparent that the Court will need to resolve the controversy. The issue has surely ripened

sufficiently by now to warrant the Court's resolution of the question. Moreover, the continuing uncertainty about the meaning of union constitutions that is produced by the availability of different forums and the application of different legal principles makes this an extremely important question of federal law that ought to be decided by this Court.

C. EVEN IF A UNION MEMBER HAS NO FEDERAL REMEDY UNDER SECTION 301 FOR VIOLATIONS OF HIS UNION'S CONSTITUTION, FEDERAL LAW DOES NOT BAR ASSERTION OF A STATE LAW REMEDY FOR SUCH VIOLATIONS

Petitioner's complaint included pendent state claims for breach of contract and intentional interference with contractual relations. The contract on which those claims are based is the constitution of the International Brotherhood of Electrical Workers.

The court of appeals decision affirmed the district court's dismissal of these

claims. App. A-11 to A-13. The court of appeals found that such claims are the subject of federal labor law. As such, state actions are not the proper vehicle for settling disputes between a union and its members. However, the court of appeals also held that union constitutions are not contracts between the member and his union. As such, the court of appeals found that state suits are also not appropriate. If there was a contract, said the court of appeals, the suit would be preempted under Section 301 of LMRA. App. A-15.

Assuming arguendo that Trail is still good law, as indicated by the court of appeals decision, and there is no federal jurisdiction over the breach of contract claims, then the pendent state claims should have survived. Under those circumstances, they could not logically be preempted by Sec. 301 since they would be based upon non 301 contracts.

The combined effect of the lower court's rulings is that a union member who has been subjected to violations of his union constitution by his union is left without any remedy whatsoever. Surely, this could not have been Congress' intention when it passed Sec. 301. At that time Congress was operating within the context of the widely held "contract theory" of union-member relationships. NLRB v. Allis Chalmers Mfg. Co., 388 U.S. 175, 192 (1967).

The court of appeals decision overlooked long standing Supreme Court precedent holding that union constitutions are contracts between the member and his union, the breach of which may give rise to a breach of contract claim. Int'l Assn. of Machinists v. Gonzales, 356 U.S. 617 (1958). In Gonzales, this Court recognized that the "contractual conception of the relation between a member and his union widely prevails in this country." Id, at

618. This view was reiterated in Journeymen at 621. [See also Local Union 13012, District 50, UMW v. Cikra, 86 O.App. 41, 90 N.E.2d 154 (1949)[5]; Jacobs v. Cook, 123 N.E.2d 276 (1953), aff'd 123 N.E.2d 282 (1954); and Price Field Pilots Club, Inc. v. Lee, 69 Abs. 216, 221 (1954) all of which recognize such a state claim.[6]]

5. This case was cited by this Court in Journeymen at 622.

6. It has also long been recognized by this Court, for example, that a union may bring an action in state court under a contract theory to enforce the payment of fines imposed against a member who violates the union constitution. NLRB v. Allis Chalmers Mfg. Co., 388 U.S. 175, 182 (1967). Petitioner acknowledges that there is, at least, a possible inconsistency between the Journeymen and Gonzales line of cases. To the extent that there is

(continued on next page bottom)

Violations of these contracts would also give rise to a state claim for intentional interference with contractual relations. Smith v. Klein 23 O.App.3d 146, 492 N.E.2d 401 (1985); Juhasz v. Quik Shops, Inc., 55 O.App.2d 51, 379 N.E.2d 235 (1977). Surely, if Petitioner had no remedy under Sec. 301 as to the violations of the union constitution, his state law claims prem ised upon the same violations should not have been dismissed.

A petition for a writ of certiorari should be granted to address this important federal question which was decided by the court of appeals in a way which is in conflict with the applicable decisions of this Court.

6. cont'd. such an inconsistency, this Court ought to resolve it in order to bring uniformity and predictability to this important area of labor law.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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December, 1990

APPENDIX

No. 88-4049

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GUY WOODDELL, JR.	)	ON APPEAL FROM
	)	THE UNITED STATES
Plaintiff-Appellant,	)	DISTRICT COURT
v.	)	FOR THE SOUTHERN
	)	DISTRICT OF OHIO
INTERNATIONAL BROTHER-	)	
HOOD OF ELECTRICAL	)	
WORKERS, LOCAL NO. 71;	)	(NOT RECOMMENDED
GREGORY SICKLES,	)	FOR FULL TEXT
Defendants-Appellees	)	PUBLICATION)

BEFORE: MARTIN, MILBURN and BOGGS, Circuit Judges.

PER CURIAM. Plaintiff-appellant Guy Wooddell, Jr. (Guy) appeals the lower court's grant of summary judgment for the defendants, as well as its refusal to allow a jury trial on one of its claims. Wooddell brought several claims under the federal labor laws, as well as pendent state law claims, against: Local 71 of the International Brotherhood of Electrical Workers ("the local" or "the union"), of which the plaintiff is a member; R.L.

"Buck" Wooddell (Buck), the president of the local and the plaintiff's brother; and Gregory Sickles, the business manager of the local and Buck's son-in-law. In light of the Supreme Court's holding in Breininger v. Sheet Metal Workers Local 6, 110 S.Ct. 424 (1989), we affirm in part, reverse in part, and remand the case for proceedings consistent with this opinion.

I

This dispute concerns the treatment of plaintiff by the local and its officers, Buck Wooddell and Sickles. The trouble between the relatives started in January 1986 when Guy opposed an announced union dues increase. In previous years, Guy had been opposed to the selection of Sickles as the business manager of the local and to the selection of other officers as well. After hearing of Guy's outspoken opposition to the dues increase, Buck telephoned Guy in order to discuss the

situation. Guy alleges that Buck told him that if he persisted in what Buck termed his false accusations against him and the union, he would be "finished" in the union. Buck recalls that Guy accused him of bribing an employer representative to rehire Sickles after a discharge and also states that Guy told him that there would an attorney "living in my (Buck's) house one of these days."

Shortly after this conversation, Buck filed union charges against Guy. Buck maintains that he told the local's recording secretary that these were not formal charges but that he wanted Guy to appear before the local's executive board in order to explain his disagreements with the local. On February 24, 1986, the local sent Guy a notice informing him that he was to appear before the board on March 14, 1986 and that he could bring witnesses and another member to act as his counsel

if he so wished. The charges, however, were not formally read at the regular monthly meeting of the board.

On March 14, 1986, Guy, after consulting an attorney, appeared before the board. He came without counsel. At the hearing, the charges were read. Afterward, Guy was asked if he were guilty of the charges. He said no. The two brothers then began shouting at each other, and Guy left. No decision was ever rendered on the charges, but the defendants did not agree to refrain from action against Guy until just before trial.

After this incident, Guy maintains that the local discriminated against him with respect to job referrals. The referral system operated by priority groups. The members were divided into four groups. Group I had the highest priority, meaning that those members would be referred first. In May 1986, Guy was dropped from

Group I to Group II. The union contends that this change was made because Guy had not worked the amount of hours over the preceding three years required to stay in Group I.

Before and after being dropped to Group II, Guy was not referred for jobs by the union from the end of January until July. The local's records show that it attempted to reach Guy by phone on July 25, 1986 and on July 28 in order to inform him of a referral. Guy claims that the local only started to refer him for jobs after he filed his complaint in federal court on July 25. On July 29, Sickles left a message with Guy's wife, but Guy did not return the call. In August 1986, after talking to Sickles, Guy accepted a job but quit after two days, claiming that the job was unsafe. Guy was referred for another job in October 1986. In February 1987, Sickles spoke to Guy's wife about another

job, but the local later discovered that Guy had accepted a different job in New Jersey.

On July 25, 1986, Guy filed this action. He made essentially six claims: (1) he was deprived of his right to free speech secured under Title I of the Labor Management Reporting and Disclosure Act (LMRDA) because the defendants retaliated against him for exercising his protected rights; (2) the union breached its contract in violation of Sec. 301 of the Labor Management Relations Act (LMRA) and state law; (3) the defendants intentionally interfered with his contractual relations in violation of state law; (4) he was deprived of his right to a full and fair hearing under the LMRDA; (5) the union breached its duty of fair representation in violation of Sec. 301; and (6) the defendants were guilty of the intentional infliction of emotional distress.

The defendants moved for summary judgment, and, in March 1988, the district court granted summary judgment to all of the defendants on the Sec. 301 breach of contract claims and to the individual defendants on the Sec. 301 fair representation claims. The case was then scheduled for trial in August 1988.

In July 1988, the defendants again moved for summary judgment on the remaining claims. In October 1988, after the submission of additional authorities by the defendants and a response by the plaintiff, the court issued an order granting summary judgment to the defendants on the rest of the claims. This appeal followed.

II

Guy first argues that the court below erred in holding that his LMRDA free speech claim concerning the defendants' alleged discrimination against him in job

referrals was within the jurisdiction of the National Labor Relations Act (NLRA), not the LMRDA. This discrimination took two forms: (1) pure discrimination in giving referrals and (2) the reclassification from Group I to II. Title I of the LMRDA, 29 U.S.C. Sec. 411, is termed the union members' bill of rights. It protects, among other rights, the right to participate equally in union elections and meetings and the right to express views and arguments. 29 U.S.C. Sec. 529 provides that no member can be disciplined for exercising his rights under the LMRDA.

The court held, on the authority of Breininger v. Sheet Metal Workers Local 6, 849 F.2d 997 (6th Cir. 1988) (per curiam), rev'd in part, 110 S.Ct. 424 (1989), that the alleged discrimination in referrals was not "discipline" under the LMRDA and therefore the plaintiff had no claim. A union member has an LMRDA claim if he can

demonstrate that he has been disciplined by his union for exercising one of the rights guaranteed in Title I of the act. Id. at 999. In Breininger we held: "It is well settled that union discrimination in job referrals is a matter within the exclusive jurisdiction of the NLRB." Id. at 998. "The LMRDA's bill of rights is intended to secure the rights of members in their status as union members and does not secure other rights related to a member's employment.... Hiring hall referrals are not a function of union membership since referrals are available to non-members as well as to members." Id. at 999 (citations omitted); but see Murphy v. Int'l Union of Operating Engineers, 774 F.2d 114 (6th Cir. 1985), cert. denied, 475 U.S. 1017 (1986).[1]

1. The court also held that plaintiff was required to exhaust his contractual remedies before he could bring his LMRDA claim as to the reclassification.

The Supreme Court reversed that holding in Breininger v. Sheet Metal Workers Local 6, 110 S.Ct. at 430-31. The Court refused to create a hiring hall exception to the general rule that a federal court has jurisdiction over a breach of the duty of fair representation claim, even if that breach might also constitute an unfair labor practice over which the NLRB has exclusive jurisdiction. Cf. San Diego Building Trades Council v. Garmon, 359 U.S. 236, 245 (1959). The district court's grant of summary judgment, on the ground that the NLRB has exclusive jurisdiction over claims alleging union discrimination in job referrals, was therefore in error.

Plaintiff's claim of discrimination in his reclassification cannot be defeated on the ground, relied upon by the district court, that plaintiff failed to exhaust his contractual remedies, as required by 29 U.S.C. Sec. 411 (a)(4). Section 411(a)

(4) recognizes an exhaustion requirement only for internal union remedies, not for remedies under a collective bargaining agreement. As there exists no exhaustion requirement for claims brought under the LMRDA, Guy is not barred from pursuing his free speech claim in federal court. He is entitled to reinstate his claims of discrimination in job referrals.

III

Guy next argues that the court below erred in rejecting his Sec. 301 contract claim. That claim is predicated upon an alleged violation of the union constitution and by-laws. The court held that a union member could not base a Sec. 301 claim against his union on the union constitution. The plaintiff disagrees.

The court held against the plaintiff on this issue, based on the authority of Trail v. International Brotherhood of Teamsters, 524 F.2d 961 (6th Cir. 1976).

In Trail, we held that a union member could not maintain a Sec. 301 breach of contract suit against the union based on an alleged violation of the union constitution. The plaintiff concedes that Trail defeats his claim. He argues, however, that the Supreme Court's decision in United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industries of the United States and Canada v. Local 334, 452 U.S. 615 (1981), has changed the law concerning this issue.

We disagree. It is true that the Court in Plumbing Industries held that a local union could sue the international union for a breach of the union constitution. The Court, however, explicitly left open the question of whether an individual could sue his local for a breach of the union constitution, holding that the Court "need not decide whether individual union members may bring suit on union constitu-

tion against a labor organization." Id. at 627 n.16. In addition, the Court, in allowing union organizations to sue each other, emphasized the special, contractual nature of the relationship between two organizations, in contrast to normal internal union governance. Id. at 626 ("There is an obvious and important difference between substantive regulation by the National Labor Relations Board of internal union governance of its membership, and enforcement by the federal courts of freely entered into agreements between separate labor organizations").

Since the Court has explicitly not resolved this issue, and the principles announced in Plumbing Industries do not require us to allow this kind of claim, we decline to abandon Trail and, thus, affirm the dismissal of the plaintiff's claim.

IV

Guy next argues that the court erred in dismissing his state law claims. He first argues that since the court below erred in holding that his state contract and interference with contract claims concerning the discriminatory referral system were subject to the exclusive jurisdiction of the NLRB, his state claims should have been considered. The plaintiff also argues that if Trail still operates to forbid a Sec. 301 suit based on the union constitution, he should be able to sue under state contract law for violation of the union constitution.

The plaintiff misconceives the relationship between state actions and federal labor law. Disputes between a union and its members are to be resolved not through contract actions but through the mechanisms set up in the LMRDA and the NLRA. Claims, for example, concerning the right

to a fair hearing guaranteed to union members are to be dealt with in the framework of an LMRDA suit.[2] Thus, despite the Court's ruling in Breininger that the NLRB does not have exclusive jurisdiction over referral system claims, such claims are still the subject of federal labor law, whether it be the NLRA or the LMRDA. State actions are not the proper vehicle for settling union-member disputes. As to any suit based on the constitution, it is exactly because the union constitution does not form a contract between the employee and the union that the state suit is not allowed. Indeed, if a contract we formed, then the suit would be preempted under Sec. 301. We thus affirm the dismissal of these claims.

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2. The district court found that even if a state law suit could be maintained for a breach of the fair hearing duty, judgment would still go to the defendants because the plaintiff was not damaged by any unfairness in his hearing.

V

The plaintiff next argues that he was deprived of a full and fair hearing in violation of his rights under the LMRDA when he was hauled into the hearing by Buck. The district court held that the plaintiff was not damaged by the charges or the hearing, and, therefore, there was no claim. Guy contends that he was damaged by the allegedly unfair hearing. He had to prepare for and attend the hearing, and afterwards the charges were hanging over his head for over two years. He also argues that the controversy is still a live one because he may be entitled to attorney's fees for the work involved in getting the union to drop the charges.

Title I of LMRDA protects a union member from being fined, suspended, expelled or disciplined without receiving a fair hearing. 29 U.S.C. Sec. 411(a) (5). We hold that because the plaintiff was never

fined, suspended, or disciplined, no hearing was necessary. The charges were only filed; there was no discipline imposed. The mere filing of charges and scheduling of a hearing does not constitute discipline under the act. Rivera v. Feinstein 636 F. Supp. 159 (S.D. N.Y. 1986). Because nothing came of these charges, the plaintiff's LMRDA rights were never challenged. Section 411 (a) (5) refers to the procedure that must be used if one is disciplined; it does not refer to the hearing procedures to be used if charges merely are filed. The plaintiff's rights were simply not violated. We therefore affirm the district court on this issue.

VI

Guy argues that the court erroneously dismissed his duty of fair representation claim under Sec. 301. The contracts between the involved contractors' associations and the local provide that

the union will make non-discriminatory referrals. The plaintiff argues that the union breached these contracts by discriminating against him and thus not fairly representing him.

The defendants argue that a Sec. 301 fair representation claim can only be brought in tandem with an allegation that the employer violated the contract. Guy argues that a plaintiff need not bring a duty of fair representation claim as a typical hybrid Sec. 301 claim. Although Guy's legal proposition has now been vindicated by the Supreme Court's decision in Breininger, we hold that this proposition is not relevant to a resolution of this issue.

Each of the collective bargaining agreements that the defendant local is alleged to have violated established an appeals committee consisting of three members: one from the union, one from the

contractors' association, and one from the public. One of the contracts, for example, provides that "[t]he appeals committee shall have the power to make a final and binding decision on any such complaint which shall be complied with by the local union." It is undisputed that the plaintiff has made no attempt to exhaust these remedies. Therefore, his failure to exhaust operates as a bar to his claim at this time.

VII

The plaintiff's last contention is that the court below erred in ruling that he was not entitled to a jury trial on his LMRDA claim. He concedes that McGraw v. United Assoc. of Journeymen, 341 F.2d 705 (6th Cir. 1965), is contrary to his position. He argues, however, that the holding is wrong and should be reconsidered. He points to Hildebrand v. Bd. of Trustees

of Mich. St. Univ., 607 F.2d 705, 708 (6th Cir. 1979), in which we held:

> the chief focus to be made when determining whether a jury trial right exists is the nature of the relief sought. If the remedy to be sought is injunctive relief and/or back pay, no jury trial right attaches. In the ordinary case, if the relief sought includes compensatory and/or punitive damages, then there does exist a right to trial by jury.

The plaintiff argues that the general principles stated in Hildebrand, in the context of a retaliatory discharge action, should lead the court to modify McGraw and hold that he is entitled to a jury trial. As Hildebrand does not concern LMRDA claims, we see no reason to disturb McGraw. Although the district court erred in granting summary judgment for the union on the LMRDA claims, Guy is not entitled to a jury trial on those claims.

The case is **REMANDED** for a consideration of Guy's free speech claims. In all

other respects, the judgment of the district court is **AFFIRMED**.

ISSUED AS MANDATE: September 12, 1990
COSTS: None

No. 88-4049

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GUY WOODDELL, JR. Plaintiff-Appellant, v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 71; GREGORY SICKLES, Defendants-Appellees.	)	ORDER

BEFORE: MARTIN, MILBURN and BOGGS, Circuit Judges.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were

fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Guy Woodell, Jr.,

Plaintiff

-vs-

International Brotherhood of Electrical Workers, Local Union No. 71, et al.

Defendants.

Case No. C-2-86-0903

Judge Graham

MEMORANDUM AND ORDER

The plaintiff, Guy Woodell, Jr., is a member of defendant International Brotherhood of Electrical Workers, Local Union No. 71 ("the Union"). Defendant R. C. Woodell is the president of the Local 71 and defendant Gregory Sickles is the business manager of the local. Plaintiff alleges that in January, 1986, he expressed opposition to a proposed by-law amendment and criticized the appointment of defendant Sickles as business manager. As a result of his actions, plaintiff was

allegedly subjected to discipline and discrimination in job referrals.

Plaintiff subsequently filed an action alleging deprivation of his right to free speech in violation of Title I of the Labor Management Reporting and disclosure Act (LMRDA), 29 U.S.C. Secs. 411, 412, and 529; deprivation of his right to a full and fair hearing in violation of the LMRDA; breach of a labor contract in violation of Sec. 301 of the Labor Management Relations Act, 29 U.S.C. Sec. 185, and Ohio law; breach of the duty of fair representation in violation of Sec. 301; intentional interference with contractual relations; and intentional infliction of emotional distress.

This case is now before the Court on defendants' motion for summary judgment under Fed. R. Civ.P. 56 or dismissal under Rule 12. Defendants first argue that this Court lacks jurisdiction over plaintiff's

Sec. 301 claims because he has failed to exhaust his remedies under his collective bargaining agreement and union constitution. Defendants rely on Republic Steel Corp. v. Maddox, 379 U.S. 650 (1979), which held that "[a]s a general rule in cases to which federal law applies, federal labor policy requires that individual employees wishing to assert contract grievances must attempt use of the contract grievance procedure agreed upon by employer and union as the mode of redress." Id. at 652 (emphasis in original).

Plaintiff concedes that he has not attempted to use the grievance and arbitration procedure provided for in his union's contract with the electrical contractors' association. However, plaintiff contends that the requirement of exhausting contractual remedies does not apply in this case since he is not making any claim against the electrical contractors. An

examination of the collective bargaining agreement reveals that it provides a procedure for resolving disputes between the parties, i.e. the union and the contractors' association. Since there is no dispute with the contractors in this case, such a procedure is inapplicable. See Automobile Transport, Inc. v. Ferdnance, 420 F.Supp. 75 (E.D. Mich. 1976) (holding arbitration procedure inapplicable to claim against union).

Defendants also contend that this Court lacks jurisdiction over the Sec. 301 claims because plaintiff has failed to exhaust the internal remedies established by the union constitution. Defendants rely on Clayton v. United Automobile Workers, 451 U.S. 679 (1981), which held that union members are generally required to exhaust their internal union remedies before bringing a Sec. 301 suit for the breach of the union's duty of fair representation.

The Clayton Court noted that exhaustion of internal remedies should be excused in certain circumstances. The Court stated that at least three factors are relevant to this determination:

> First, whether union officials are so hostile to the employee that he could not hope to obtain a fair hearing on his claim; second, whether the internal union appeals procedures would be inadequate either to reactivate the employee's grievance or to award him the full relief he seeks under Sec. 301; and third, whether exhaustion of internal procedures would unreasonably delay the employee's opportunity to obtain a judicial hearing on the merits of his claim.

451 U.S. at 689. Accord, Monroe v. United Automobile Workers, 723 F.2d 22, 24-5 (6th Cir. 1983).

In the instant case, the constitution of the International Brotherhood of Electrical Workers provides for appeals to the International Vice President responsible for a member's district. Local 71 is in the Fourth District and B.G. Williamson is

the Vice President assigned to that district. There is no evidence that Williamson is hostile toward the plaintiff. Therefore, the first Clayton exception is not applicable.

As to the second exception, it is unclear whether an appeal would be adequate to provide plaintiff with the relief he seeks. Plaintiff is seeking, inter alia, wages and fringe benefits allegedly lost as a result of unlawful discrimination in job referrals. Article XXVII of the union constitution, which contains the appellate procedure, applies to disciplinary actions taken by a trial board at the local level. In the instant case, however, the alleged discrimination in job referrals was not the result of a formal decision by a trial board. Thus, Article XXVII does not appear to be applicable to this dispute.

Even assuming arguendo that an appeal to Vice President Williamson could provide

plaintiff with complete relief, the use of that procedure is barred by the trial board's failure to render an official decision. While the plaintiff was summoned to a hearing before that board on March 14, 1986, the board has not yet issued a decision which can be appealed to the Vice President. Therefore, plaintiff's use of the appellate procedure would unreasonably delay his opportunity to seek judicial redress. Accordingly, the Court concludes that exhaustion of internal remedies was not required in this case.

Similarly, defendants argue that plaintiff's LMRDA claims are barred by his failure to exhaust his internal union remedies. 29 U.S.C. Sec. 411(a)(4) provides that a union member "may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative pro-

ceedings against such organizations or any officer thereof...." In this case, the plaintiff attended the union trial on March 14, 1986 and did not file his original complaint until July 25, 1986. Thus, plaintiff did attempt to use his union remedies for more than the four months required by Sec. 411(a)(4). Moreover, as discussed above, those remedies would be inadequate in this case.

Defendants next contend that the individual defendants cannot be held liable under Sec. 301. This contention is supported by the weight of authority. See, e.g. Peterson v. Kennedy, 771 F.2d 1244, 1256-57 (9th Cir. 1985); Suwanchai v. International Brotherhood of Electrical Workers, 528 F.Supp. 851, 861-62 (D. N.H. 1981). Moreover, union officers cannot be held liable under a state law claim that is essentially the same as a Sec. 301 claim. Peterson, 771 F.2d at 1257; Univer-

sal Communications Corporation v. Burns, 449 F.2d 691, 693-94 (5th Cir. 1971). Accordingly, the breach of contract claims against defendants Woodell and Sickles must be dismissed, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief may be granted.

However, the individual defendants may be liable under the LMRDA. Aguirre v. Automotive Teamsters, 633 F.2d 168, 172 (9th Cir. 1980); Rosario v. Amalgamated Ladies Garment Cutters Union, Local 10, 605 F.2d 1228, 1246 (2d Cir., 1979), cert. denied, 446 U.S. 919 (1980); Waring v. International Longshoremen's Association, Local 1414, 665 F.Supp. 1576 (S.D. Ga. 1987). As the Second Circuit has noted, "[g]iven the Act's intent to curb the power of overweening union officials, this is clearly the right result." Morissey v. National Maritime Union of America, 544 F.2d 19, 24 (2d Cir. 1976).

Defendants' final argument is that a union member may not bring a Sec. 301 action based upon a violation of his union's constitution. Defendants rely on Trail v. International Brotherhood of Teamsters, 542 F.2d 961 (6th Cir. 1976), in which the court held that Congress did not intend Sec. 301 to be a vehicle for resolving internal union disputes. Plaintiff contends that Trail is no longer controlling in light of the Supreme Court's decision in United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada v. Local 334, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, 452 U.S. 615 (1981) (Journeymen).

In Journeymen, the Court held that "a union constitution is a 'contract' within the plain meaning of Sec. 301(a)...." Id.

at 622. The plaintiff in that case was a union local which alleged that its parent international union had violated the international's constitution. The Supreme Court held that the federal courts have jurisdiction under Sec. 301 to resolve such disputes. However, the Court expressly left open the issue of whether individual union members could bring suit for violation of a union constitution. Id. at 627, n. 16.

In Lewis v. International Brotherhood of Teamsters, Local 771, 886 F.2d 1310 (3d Cir. 1987), the court answered that question in the affirmative. The Lewis court stated that the reasoning of the Trail decision had been undercut by the Journeymen decision. Other post-Journeymen decisions which have allowed suits by individual members based on union constitutions include Kinney v. International Brotherhood of Electrical Workers, 669

F.2d 1222 (9th Cir. 1982), Legutko v. Local 816, International Brotherhood of Teamsters, 606 F.Supp. 352 (E.D. N.Y. 1985), and Doby v. Safeway Stores, Inc., 523 F.Supp. 1162 (E.D. Va. 1981).

This Court, however, has previously held that it is still bound by the Trail decision. Werner v. McLean Trucking Co., 627 F.Supp. 203 (S.D. Ohio 1985) (Porter, J.). Accord, Frenza v. Sheet Metal Workers' International Association, 567 F. Supp. 580 (E.D. Mich. 1983). Moreover, Congress has provided adequate remedies for aggrieved union members in Title I of the LMRDA, under which the plaintiff has stated a claim. Accordingly, plaintiff's Sec. 301 claim for breach of the union constitution must be dismissed, pursuant to Fed. R. Civ. P. 12(b)(1), for lack of subject matter jurisdiction. As previously discussed, this holding cannot be circumvented through a purported state law claim

and thus plaintiff's common law claim for breach of contract must also be dismissed.

In summary, plaintiff's claims against all defendants under Sec. 301 of LMRA and state law for breach of the union constitution are DISMISSED. Plaintiff's claims against defendants Woodell and Sickles for breach of the duty of fair representation are also DISMISSED. In all other respects, defendants' motion for summary judgment or dismissal is DENIED.

Therefore, plaintiff's claims for deprivation of his right of free speech, deprivation of his right to a fair hearing, intentional interference with contractual relations, and intentional infliction of emotional distress remain for resolution at trial.

It is so ORDERED.

JAMES L. GRAHAM, United States District Judge

DATE: March 21, 1988

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

- - -

GUY WOODDELL, JR.,

Plaintiff,

vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 71, et al.,

Defendants.

Case No. C-2-86-0903

- - -

EXCERPT TRANSCRIPT

of proceedings before The Honorable James L. Graham, Judge, on Monday, August 29, 1988, at 8:00 a.m.

- - -

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On behalf of the Defendants.

- - -

Monday Morning Session,
August 29, 1988.

- - -

Thereupon, the following proceedings were had in chambers out of the presence and hearing of the jury:

....

THE COURT: Counsel, let me give you the benefit of my rulings on the remaining issues.

On the question of whether or not the Plaintiff is entitled to a jury trial, under the LMRDA, the Defendants filed a motion to strike a jury demand.

I have reviewed the briefs and have extensively considered these two issues as they relate to both the LMRDA and Section 301.

Now, in regard to the right to jury trial under the LMRDA, the Court feels bound by the decision of the Sixth Circuit in McGraw v. United Association of Journeymen, 341 Fed 2d 705, although the

Court considers it very likely that the Sixth Circuit will reconsider and reverse McGraw if presented with the opportunity to do so.

And for that reason, the Court had notified counsel that it intended to impanel an advisory jury in this case. Nevertheless, the Defendants' motion to strike the jury demand is granted with respect to the LMRDA claim because under McGraw Plaintiff does not have a right to a jury trial.

Now, however, under the Section 301 claim, the Court finds that the Plaintiff is entitled to a jury trial and agrees with the reasoning of Senior Judge Contie in the case of Wood v. International Brotherhood of Teamsters 807 Fed 2d 493.

And since the Section 301 claim asserted here is a breach of contract claim, the Court concludes that it is triable to a jury as a matter of right.

Now, on the issue of punitive damages, the Court finds that they are available under the LMRDA upon a showing of actual malice or reckless or wanton indifference, and the Court relies on the case of Shimman v. Frank 625 Fed 2d 80.

However, the Court concludes that punitive damages are not available under Section 301. And in reaching this conclusion, the Court relies on International Brotherhood v. Foust 442 U.S. 42 and Farmer v. ARA Services, Inc., 660 Fed 2d 1096.

Counsel, I believe that takes care of all of the issues that have been raised, again, with the exception of the Defendants' pre-emption argument, which the Court wants to have additional evidence on.

....

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Guy Wooddell, Jr.,

Plaintiff,

-vs-

International Brotherhood of Electrical Workers, Local Union No. 71, et al.

Defendants.

Case No. C-2-86-0903

JUDGE GRAHAM

ORDER

This case arises out of an intra-union dispute which is complicated by an intra-family dispute between the plaintiff union member and his brother, the union president. Plaintiff is a member of defendant International Brotherhood of Electrical Workers, Local Union 71 ("Local 71"). Defendant R. L. Wooddell is the president of Local 71 and defendant Gregory Sickles is the business manager. Plaintiff is the younger brother of defendant Wooddell and Sickles is the son-in-law of the elder Wooddell.

Plaintiff alleges that in January, 1986 he expressed his opposition to a proposed amendment to the by-laws of Local 71 and criticized the appointment of defendant Sickles as business manager. Plaintiff further alleges that as a result, on January 28, 1986 his brother filed internal union charges against him, claiming that he had made false accusations against him and Mr. Sickles and that this violated a provision of the Constitution of the International Union. Plaintiff was directed to appear before the Executive Board of Local 71 on March 14, 1986 to answer these charges. Plaintiff did appear at the meeting and denied that he was guilty of the alleged offense. No formal disposition of the charges was ever made and defendants contend that they were "informal" and were not intended to result in punishment of the plaintiff. Plaintiff asserts, however, that nothing prevents the defendants from

entering a finding of guilty and imposing punishment at any time and that the charges continue to represent a threat of harm. Plaintiff claims that the charges were improperly commenced, that they were filed in retaliation for his exercise of his rights of freedom of speech guaranteed under the union constitution, and that he did not receive a fair hearing. Plaintiff claims that he did not receive a fair hearing because his brother not only filed the charges, but presided over the hearing in his capacity as president of Local 71.

Plaintiff further claims that as a result of speaking out against the proposed by-law amendment and the appointment of defendant Sickles as business manager, he was subjected to retaliation in the form of manipulation of the union's job referral system, resulting in loss of employment. Local 71 operates a hiring hall in which it refers members and non-members to

prospective employers. This is a first in, first out system in which the applicants for employment are classified into four subgroups, denominated groups I through IV, depending upon various criteria including years of experience in the trade, residency in the geographical area constituting the labor market and other factors. All applicants in Group I must be referred out before proceeding to the applicants in Group II and so on with Groups III and IV.

Plaintiff asserts two distinct claims of alleged discrimination by the defendants in the operation of the job referral plan. First, he claims that the defendants did not refer him out for jobs when his name came up on the list. In his amended complaint, plaintiff alleged that this form of economic discrimination began on January 27, 1986. Defendant denies that such discrimination occurred. The second element of plaintiff's claim of economic

discrimination by improper operation of the job referral system is his claim that on May 29, 1986, defendants improperly transferred him from Group I to Group II. Defendants admit that this occurred but allege that it was a proper reclassification because plaintiff had not worked the required number of hours during the preceding three years in order to qualify for a position in Group I. Plaintiff disputes this and claims that he did have the requisite number of hours.

Based on the above facts, plaintiff asserted a variety of claims including interference with and retaliation for the exercise of his right of free speech in violation of Title I of the Labor Management Reporting and Disclosure Act (LMRDA) 29 U.S.C. Secs. 411, 412, and 529; deprivation of his right to a full and fair hearing in violation of the LMRDA; breach of a labor contract in violation of Sec.

301 of the Labor Management Relations Act (LMRA) 29 U.S.C. Sec. 185 and Ohio law; breach of the duty of fair representation in violation of Sec. 301; intentional interference with contractual relations; and intentional infliction of emotional distress.

Plaintiff's breach of contract claims have two branches, first, plaintiff claims that the actions of the defendants complained of constituted a breach of the Constitution of the International Union and the by-laws of Local 71 and second, that their actions constituted a breach of the referral provisions of the collective bargaining agreements entered into between Local 71 and various contractors.

In a memorandum and order filed on March 21, 1988, the Court granted partial summary judgment to the defendants. The Court dismissed plaintiff's claims under Sec. 301 of the LMRA and state law for

breach of the union constitution, citing Trail v. International Brotherhood of Teamsters, 542 F.2d 961 (6th Cir. 1976) and recent district court decisions following Trail. The Court further reasoned that inasmuch as plaintiff's claims arose out of alleged retaliation for the exercise of his rights of free speech, matters specifically covered by the LMRDA, he had an adequate remedy under that act for his breach of contract claims based upon alleged violations of the constitution and by-laws of the unions. See 29 U.S.C. Sec.s 411(a)(1), (2), (5); 529. At that time, the Court also granted summary judgment in favor of individual defendants Wooddell and Sickles with respect to the claims asserted against them under Sec. 301 since the weight of authority holds that individual defendants cannot be held liable under that statute.

The Court then scheduled this matter for trial on August 29, 1988. On July 19, 1988, defendants filed a second motion for summary judgment. The parties appeared for trial on August 29, 1988, and the Court thereupon made oral rulings on the issues raised by defendants' second motion for summary judgment and proceeded to conduct a hearing pursuant to Rule 56(d) on the issue of whether or not defendant was entitled to summary judgment on the grounds that plaintiff's claims were barred by the doctrine of collateral estoppel. The Court concluded that plaintiff was not collaterally estopped from pursuing his claims of discriminatory job referrals and improper reclassification from Group I to Group II in the referral system.

In ruling on defendants' motion for summary judgment, the Court held that with respect to plaintiff's claims based upon

his reclassification from Group I to Group II of the referral system, plaintiff's claims were barred by his failure to exhaust the internal contractual remedies for such a complaint. Each of the collective bargaining agreements established an appeals committee consisting of a member appointed by the union, a member appointed by the employer or employer association, and a public member appointed by both of the other members. The function of the committee "was to consider any complaint of any employer or applicant for employment arising out of the administration of the contractual provisions governing referrals." The appeals committee was empowered to make a decision which was binding on the local union. The agreement between the local union and the Greater Cleveland Chapter of the National Electrical Contractors Association contained the following provision:

> An appeals committee is hereby established composed of one member appointed by the union, one member appointed by the employer or by the association, as the case may be, and a public member appointed by both of these members. It shall be the function of the appeals committee to consider any complaint of any employer or applicant for employment arising out of the administration of the local union of Sections 3 to 7 of this addendum. [Sections 3 through 7 set forth the referral procedure, including the classification of applicants into groups I through IV and the conditions for those classifications]. The appeals committee shall have the power to make a final and binding decision on any such complaint which shall be complied with by the local union. The appeals committee is authorized to issue procedural rules for the conduct of its business, but it is not authorized to add to, subtract from, or modify any provisions of this addendum and its decisions shall be in accord with this addendum.

The Court concluded that this appeal procedure provided the plaintiff with a speedy and adequate remedy for his grievances over classification. Whether plaintiff was properly reclassified could have readily been determined by records

maintained by the union and the employers, or by reference to the plaintiff's own records. This dispute could have been promptly resolved by the appeals committee, a fair and impartial tribunal consisting of representatives of both the union and the employer, as well as a public member. The committee's decision would have been binding on the union. It is undisputed, however, that plaintiff made no attempt to utilize this procedure. Therefore, he is precluded from raising these claims for the first time in this Court. The requirement of exhaustion of contractual remedies bars plaintiff's claims under the LMRA. See Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-53 (1965); Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 563, 91 LRRM 269 (1967); Dill v. Greyhound Corp., 435 F.2d 231, 237 (6th Cir. 1970), cert. denied, 402 U.S. 952 (1971); Bsharah v. Eltra

Corp., 394 F2d 502, 503 (6th Cir. 1968); Woody v. Sterling Aluminum Products, Inc., 365 F.2d 448, 456 (8th Cir. 1966), cert. denied, 386 U.S. 957, (1967). Likewise, plaintiff's failure to exhaust his contractual remedy bars his claims under the LMRDA. 29 U.S.C. 411(a)(4) provides:

> No labor organization shall limit the right of any member thereof to institute an action in any court ... Provided that such member shall be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal ... proceedings against such organization or any officer thereof.

The exhaustion requirement has been upheld in Bise v. International Electrical Workers, 618 F.2d 1299 (9th Cir. 1979), cert. denied, 449 U.S. 904 (1980); McCraw v. United Association, 341 F.2d 705, 711 (6th Cir. 1965); Chapa v. Local 18, 737 F.2d 929 (11th Cir. 1984); Detroy v. American Guild of Variety Artist, 286 F.2d 75 (2d Cir.), cert. denied, 366 U.S. 929 (1961);

Winter v. Local 639, 569 F.2d 146 (D.C. Cir. 1977).

The Court concluded, however, that although this contractual remedy would be fully adequate for plaintiff's claim of improper reclassification from Group I to Group II, it would not be an effective remedy for his claims of discrimination and manipulation of the referral process itself. The appeals committee does not have the authority to award damages for lost wages and it would be difficult for the plaintiff to effectively utilize the appeal machinery to remedy a pattern of daily discrimination in job referrals. Plaintiff would have to constantly monitor the activities of the business agent in order to detect discrimination and the vindication of his rights under the referral system might require the filing of multiple appeals. Accordingly the Court concluded that plaintiff was not barred

from pursuing his claims of discrimination in job referrals. In retrospect the Court harbors some doubt as to the wisdom of this distinction and feels that a good argument can be made that the contractual remedy is equally adequate to remedy claims of discrimination in referrals. However, this issue has been mooted by subsequent developments, see discussion of Breininger v. Sheet Metal Workers Local 6, infra.

When the Court announced its decision, plaintiff's counsel indicated his desire to conditionally dismiss plaintiff's claims based upon discriminatory job referrals. Counsel stipulated that plaintiff did not sign the referral list indicating that he desired employment until March 11, 1986, a little more than two and one-half months before his reclassification to Group II on May 29, 1986. Plaintiff indicated that he would have difficulty

proving significant damages during this interval and that his main damage claim rested upon his reclassification from Group I to Group II. The parties then agreed that plaintiff would conditionally dismiss his claim for discrimination in referrals with the understanding that the Court would make appropriate findings and an order under Rule 54(b) Fed. R. Civ. P., permitting plaintiff to appeal the Court's rulings on plaintiff's remaining claims with the understanding that plaintiff would be permitted to reinstate his claims of discrimination in job referrals only in the event of a reversal of the Court's dismissal of his claims arising out of his reclassification from Group I to Group II.

With regard to plaintiff's claims that he had been subjected to an improper disciplinary proceeding in violation of the LMRDA, the parties entered into a stipulation that the union would take no further

action against the plaintiff with respect to the charges referred to in the notice of February 24, 1986 and that those charges would be considered dismissed. On the basis of this stipulation, the Court found that the charges in question presented no further threat to the plaintiff which would justify injunctive relief and that plaintiff had shown no evidence of actual damages as a result of the filing of those charges or the hearing of those charges at the executive board meeting of March 14, 1986. Accordingly, the court found that defendants were entitled to summary judgment on plaintiff's claims that he was subjected to improper charges and was deprived of his right to a full and fair hearing in violation of the LMRDA or in violation of the constitution of the International Brotherhood of Electrical Workers or the by-laws of Local 71.

In his memorandum contra defendants' second motion for summary judgment, plaintiff indicated that he was withdrawing his claim for intentional infliction of emotional distress. Id. at 34.

On September 6, 1988, before the Court had entered an order confirming its rulings of August 29th, 1988, defendants' counsel brought to the Court's attention the decision of the Sixth Circuit in Breininger v. Sheet Metal Workers Local 6, 841 F.2d 1125, 128 LRRM 2845 (1988). On September 9, 1988, defendants filed a motion for leave to file additional authorities or for reconsideration based upon the Breininger decision. In Breininger, the court held that union discrimination in job referrals is a matter within the exclusive jurisdiction of the NLRB:

> [1] It is of no consequence that the union's allegedly discriminatory referral policies are described as a breach of the NLRA's duty of fair representation or as a violation of

> the LMRDA's bill of rights. "It is not the label affixed to the cause of action ... that controls the determination." Borden, 373 U.S. at 698. The case law developed subsequent to Borden and Hardeman forecloses either theory.
>
> [2] Circuit courts have consistently held that NLRA fair representation claims must be brought before the board.

The Court further held that discrimination in job referrals did not constitute "discipline" within the meaning of NLRA, 29 U.S.C. Sec. 411(a)(5):

> ... The LMRDA's bill of rights is intended to secure the rights of members in their status as union members and does not secure other rights related to a member's employment ... Hiring hall referrals are not a function of union membership since referrals are available to non-members, as well as to members .... Discrimination in the referral system, because it does not breach the employee's union membership rights, does not constitute "discipline" within the meaning of LMRDA.

Breininger supplies an additional ground for the Court's order of summary judgment on plaintiff's claims arising out of his reclassification from Group I to

Group II of the referral system, and Breininger furnishes a basis for final judgment in favor of the defendants on plaintiff's claims arising out of alleged discrimination in the referral system. Accordingly, the Court will modify its oral decision accepting plaintiff's conditional dismissal of those claims and instead the Court will enter summary judgment on those claims on the authority of Breininger.

Plaintiff has asserted claims under state law for breach of contract and for intentional interference with contractual rights. In each instance, he is relying on provisions of the Constitution of the International Union and the by-laws of the Local Union. Insofar as these claims relate to provisions guaranteeing plaintiff a fair and impartial trial, defendants are entitled to judgment on the same grounds as respects plaintiff's

claims under the LMRA, 29 U.S.C. Sec. 411(a)(5). Plaintiff sustained no damages as a result of the alleged unfair hearing and the charges filed against him have been concluded in his favor. With respect to claims arising out of the provisions of the by-laws of Local 71, which require the business manager to devise a "practical and fair" means of distributing available jobs to qualified members, plaintiff's state law claims are preempted by the NLRB act and are within the exclusive jurisdiction of the NLRB. See International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO v. Hardeman, 401 U.S. 233, 239-40 (1970); Local 100, United Association of Journeymen & Apprentices v. Borden, 373 U.S. 690, 694-96 (1963). Furthermore, the Court has held that insofar as those claims relate to plaintiff's reclassification from Group I to Group II

of the referral system, they are barred by his failure to exhaust his contractual remedies.

Insofar as plaintiff's contract claims relate to a requirement that the local union abide by the collective bargaining agreements entered into with employers, the claims are likewise grounded on alleged discrimination in referrals and reclassification from Group I to Group II within the referral system. Plaintiff claims that the Constitution of the International Union requires the Local Union to "live up to all collective bargaining agreements." Therefore, plaintiff would appear to be claiming that this provision of the Constitution of the International Union is a contract binding on the local union and that he has a cause of action for breach of that contract. Plaintiff further claims that he has a cause of action against the local union for inten-

tional interference with the collective bargaining agreement vis-a-vis his claims of discriminatory referral and improper reclassification. Again, since these claims relate only to alleged discrimination in the job referral system, they are preempted by the NLRB act and are subject to the exclusive jurisdiction of the NLRB and plaintiff has no claims under state law.

In light of the foregoing, defendants' motion for summary judgment is well taken in all of its branches and the clerk shall enter final judgment in favor of the defendants, dismissing all of the plaintiff's claims with prejudice with costs to plaintiff.

It is so ORDERED.

JAMES L. GRAHAM, United States District Judge

DATE: October 19, 1988

(2)

No. 90-967

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

GUY WOODDELL, JR.,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Is a union member who sues his union and its officers for violations of his free speech rights under Title I of the Labor Management Reporting and Disclosure Act entitled to a trial by jury under the Seventh Amendment?

2. Does Section 301 of the Labor Management Relations Act provide the basis for a union member suing his union in federal court for violation of the union Constitution?

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IN THE

Supreme Court of the United States

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No. 90-967

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BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

Not surprisingly, the Respondents dispute the Statement of the Case as presented by the Petitioner. The best statement was presented by the Sixth Circuit in its decision, which has the advantage of being neutral.

This is a familial squabble masquerading as a Landrum-Griffin Act case. Because one of the two brothers involved in this fraternal fight is the president of a local union, the local union, IBEW Local 71, and its business manager were touched by the controversy.

This dispute concerns the treatment of Petitioner by the local union and its officers, Business Manager Gregg Sickles and Local President Buck Wooddell. Some background is necessary here to put the case into perspective. Petitioner, Guy Wooddell, is the younger brother of Respondent Buck Wooddell. For some twenty years prior to October of 1985, Buck Wooddell was the Business Manager of Local 71. During that period Petitioner had the opportunity for full employment as a journeyman electrican. In October of 1985, Respondent Buck Wooddell was succeeded in the position of business manager by his son-in-law, Gregg Sickles, who was married to the daughter of Buck Wooddell and niece of Petitioner Wooddell. The business manager of the local union is the chief executive officer who oversees the daily affairs of the local union including the staff, both clerical and assistant business representatives, when they are on the payroll. The president of the local union is not a paid, full-time officer; rather he is an officer whose duties consist primarily of presiding at meetings and appointing officers and committees. It has been held by a member who is working full-time at the trade or, as here, by a retired member.

The trouble between the relatives started in January 1986 when Guy opposed an announced union dues increase. In previous years, Guy had been opposed to the selection of Sickles as the business manager of the local and to the selection of other officers as well. After hearing of Guy's outspoken opposition to the dues increase, Buck telephoned Guy in order to discuss the situation. Guy alleges that Buck told him that if he persisted in what Buck termed his false accusations against him and the union, he would be "finished" in the union. Buck recalls that Guy accused him of bribing an employer representative to rehire Sickles after a discharge and also states that Guy told him that there would be an attorney "living in my [Buck's] house one of these days."

Shortly after this conversation, Buck filed union charges against Guy. Buck maintains that he told the local's recording secretary that these were not formal charges but that he wanted Guy to appear before the local's executive board in order to explain his disagreements with the local. On February 24, 1986, the local sent Guy a notice informing him that he was to appear before the board on March 14, 1986 and that he could bring witnesses and another member to act as his counsel if he so wished. The charges, however, were not formally read at the regular monthly meeting of the board.

On March 14, 1986, Guy, after consulting an attorney, appeared before the board. He came without counsel. At the hearing, the charges were read. Afterward, Guy was asked if he was guilty of the charges. He said no. The two brothers then began shouting at each other, and Guy left. No decision was ever rendered on the charges.

During most of this time, January to March 11, 1986, Guy, for whatever reason, had not registered himself in the hiring hall (referral) book. He signed the referral book Group I on March 11, 1986.

After these incidents, Guy maintains that the local discriminated against him with respect to job referrals. The referral system operated by priority groups. The members were divided into four groups. Group I had the highest priority, meaning that those members would be referred first. In May 1986, Guy was dropped from Group I to Group II. The union contends that this change was made because Guy had not worked the amount of hours over the preceding three years required to stay in Group I.

Before and after being dropped to Group II, Guy was not referred for jobs by the union from the end of January until July. The local's records show that it attempted to reach Guy by phone on July 25, 1986 and on July 28 in order to inform him of a referral. Guy claims

that the local only started to refer him for jobs after he filed his complaint in federal court on July 25. On July 29, Sickles left a message with Guy's wife, but Guy did not return the call. In August 1986, after talking to Sickles, Guy accepted a job but quit after two days, claiming that the job was unsafe. Guy was referred for another job in October 1986. In February 1987, Sickles spoke to Guy's wife about another job, but the local later discovered that Guy had accepted a different job in New Jersey.

On July 25, 1986, Petitioner filed this action. He made essentially six claims: (1) he was deprived of his right to free speech secured under Title I of the Labor Management Reporting and Disclosure Act (LMRDA) because the Respondents retaliated against him for exercising his protected rights; (2) the union breached its contract in violation of § 301 of the Labor Management Relations Act (LMRA) and state law; (3) the Respondents intentionally interfered with his contractual relations in violation of state law; (4) he was deprived of his right to full and fair hearing under LMRA; (5) the union breached its duty of fair representation in violation of § 301; and (6) the Respondents were guilty of the intentional infliction of emotional distress.

The Respondents moved for summary judgment, and, in March 1988, the district court granted summary judgment on the § 301 breach of contract claim and to the individual Respondents on the § 301 fair representation claims. The case was then scheduled for trial in August 1988.

In July 1988, the Respondent again moved for summary judgment on the remaining claims; the trial, meanwhile was continued. In October 1988, after the submission of additional authorities and a response by the Petitioner, the court issued an order granting summary judgment to the Respondents on the rest of the claims.

Upon appeal to the Court of Appeals for the Sixth Circuit, it affirmed in part and reversed in part. In its decision, the court reversed the district court's dismissal of Petitioner's claim that he was deprived of work in retaliation for his outspoken opposition to the dues increase, which was premised upon the LMRDA. The Court of Appeals affirmed the district court's ruling in all other respects. In addition, the Court of Appeals noted that Petitioner was not entitled to a jury trial.

The court further determined that Petitioner had no right to pursue a federal claim under Section 301 of the LMRA for Local 71's alleged violations of the union constitution.

At the same time, the court held that claims brought under union constitutions are exclusively the creatures of federal law. As such, the court determined that pendent state claims may not be a vehicle for resolving such disputes. On September 4, 1990 the Court of Appeals denied Petitioner's Petition for Rehearing.

REASONS FOR DENYING THE WRIT

I. JURY TRIAL DECISION IS DICTA

This Court should not grant certiorari on the jury trial issue. This case has not been tried yet. The Court of Appeals affirmed the dismissal of the case on Summary Judgment in all respects except the LMRDA free speech claim. The Court reversed this claim on the basis of this Court's intervening decision in *Breininger v. Sheet Metal Workers*, 110 S.Ct. 424 (1989).

In the Sixth Circuit the Petitioner raised the issue of his perceived right to a jury trial in LMRDA free speech cases, apparently seeking some guidance for the trial court. In remanding the free speech claim, the Court noted in dicta that he was not entitled to a jury trial (Appendix, A-19-20). The Court, basing its decision on *McCraw v. United Association of Journeymen*, 341 F.2d

705 (6th Cir. 1965), did not thoroughly discuss the issue. It did not refer to this Court's intervening decision in *Teamsters Local 391 v. Terry*, 494 U.S. ——, 110 S.Ct. 1339 (1990), nor did it discuss *Terry*'s impact on LMRDA claims.

All LMRDA free speech claims are fact-specific. This Court would benefit from an analysis of those facts, as applied to the established standards for a jury trial by both the trial court and the Sixth Circuit. It should not rule on this difficult issue on the basis of a record wherein summary judgment was granted.

II. RIGHT TO A JURY TRIAL IN LMRDA ACTION

At issue in this case is the right of a union member, who claims a violation of Title I, Section 101(a)(5), to have his case heard by a jury of his peers. This Court should decline to hear such an issue.

An inquiry into whether a union member alleging a violation of Title I of the LMRDA is entitled to a jury trial should start with this Court's recent decision in *Teamsters Local 391 v. Terry, supra.* There the court held in a plurality opinion that union members, who sued their union under Section 301 claiming a breach of the duty of fair representation and seeking backpay, were entitled to have their cause heard by a jury. Whether or not the Seventh Amendment guarantees a litigant the right to a jury trial turns on whether legal rights and remedies are present. To answer this question, a two-fold analysis has been developed. First, there is a comparison to an action at common law in the courts of eighteenth century England. The first step in the analysis consists of searching for the closest historical analogue to the statutory action. The second steps involves an investigation into the nature of the rights at issue. If legal rights are involved, a jury's participation is required. (The *Terry* plaintiffs

were seeking only damages because the union alone was involved; hence their rights were found to be legal).

The first stage of the court's inquiry led it to conclude that the action was like an action for breach of trust. Justice Marshall concluded that this aspect of the examination remained in equipose between legal and equitable issues. However, when the remedies were looked at, it was clear that the request for back-pay benefits was legal in nature. Accordingly, a jury trial was awarded to the employees.

The *Terry* decision merely extended the court's earlier position on the Seventh Amendment right to a jury trial in statutory claims; see, *Granfinanciera, S.A. v. Nordberg*, 109 S.Ct. 2782, 2790 (1989) and *Curtis v. Loether*, 415 U.S. 189, 194 (1974).

Since *Terry* was handed down, a Circuit Court has ruled that employees in a duty of fair representation case requesting both reinstatement and back-pay, filed against the employer and the union, were entitled to a jury trial, *Brownlee v. Yellow Freight System*, 1990 W.L. 197743 (8th Cir. 1990). No report of *Terry*'s application to the LMRDA was found in any of the circuits.

Petitioner in his brief has stated that there is a split in the circuits over the right to a jury trial in a LMRDA case. The Sixth Circuit in *McCraw v. United Association of Journeymen*, 341 F.2d 705, 709 (6th Cir. 1965) held that there is no right to a jury trial. This decision was followed by the Court of Appeals in the instant case. Petitioner notes that the other three circuits that have considered this issue have disagreed with the Sixth Circuit in *McCraw*. (Petitioner's brief at pp. 21-22). Respondents agree with this statement of the law.

Notwithstanding this agreement on the split in circuits, this is not the opportune time for this Court to consider that issue. The *Terry* decision has refined this Court's earlier decision in *Curtis v. Loether, supra.* There should

be an opportunity for the circuits to apply *Terry* to LMRDA cases so that this Court has the benefit of the analysis of the Circuits. Accordingly, there is no need for the Court to address the issue at this time.

SECTION 301 AND THE UNION CONSTITUTION

The Sixth Circuit below recognized that the claims of discrimination and job referrals stated a cause of action under Title I of the LMRDA, 29 U.S.C. 411, based on the Supreme Court's decision in *Breininger v. Sheet Metal Workers Local 6*, 110 S.Ct. 424 (1989). (Confer Appendix pp. A-8-A-10). Petitioner claims a second jurisdictional basis for this action, namely under Section 301 of the LMRA, 29 U.S.C. 185.

Although acknowledging a split in the circuits on this particular issue, Respondents do not agree that it should be considered at this time by the Court. First, the legislative history of Section 301 indicates that it was not meant to encompass disputes between union members and their unions, but to regulate collective bargaining. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962); and *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 104 (1962). Secondly, this a garden variety Title I claim that should rise or fall as a Title I claim under LMRDA, rather than on some esoteric 301 theory.

In *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981), this Court held that a Union Constitution was a contract between a Local and an International Union and that Section 301 conferred jurisdiction to sue the union on this "contract." Section 301 provides in pertinent part for suits by and against a labor organization, as follows:

> "Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act or between any such labor organization may be brought in any district court of the United States having jurisdiction of the parties. . . ."

The Supreme Court in *Plumbers*, acceding to the plain language of the statute, recognized that such a suit could be brought in federal court. This case was a contract suit, literally "between any such labor organizations," 29 U.S.C. 185(a). The court expressly reserved the question of 301 jurisdiction in suits by individuals against their union in a footnote, 452 U.S. at 627 note 16.

This case should not be the vehicle to address this reserved question. Here there is presented a garden variety Title I free speech claim, with a familial overtone. This case should be considered as a Title I claim, not complicated by some possible accretion found in a union Constitution.

Petitioner has argued among other things that a union member's right to maintain a 301 action against his union under its Constitution is a logical extension of *Plumbers*. This Court, in considering statutory construction, is not interested in logical extensions but in the congressional intent. *Steelworkers v. Sadloski*, 457 U.S. 102, 111 (1982).

Did Congress intend Section 301 of the LMRA to provide a statutory basis for a union member to sue his union for any deviation from that Constitution? The purpose of Section 301 was to regulate the union's power in collective bargaining. The plain language of the statute speaks of litigation between an employer and a union or between two unions. No mention is made of individual union members. The answer to the question above is "No."

A closer scrutiny of this question reveals the logical extension is illogical and impractical. Does this Court wish to make a "federal case" of every alleged violation of each local, district council, state council, and international union Constitution? Certainly not. The rights of union members are guaranteed in numerous places in federal law, such as the NLRA and LMRDA. This Court should

not grant 301 status to each and every claim arising under every union Constitution in this country, whether local union or international union.

Perhaps most importantly, the Petitioner's claims of discriminatory job referrals state a cause of action under Title I of the LMRDA, at least since this Court's decision in *Breininger v. Sheet Metal Workers*, 110 S. Ct. 424 (1989). Indeed, the facts in *Breininger* are not dissimilar to the facts in this case, except for the familial touch in this case. Petitioner then has a right to have the district court hear his claims. Since Petitioner already has a statutory basis for this case, there is no need for this Court to take this case to determine whether he has an additional basis.

CONCLUSION

For the foregoing reasons, we respectfully ask this Court to deny the Writ.

Respectfully submitted,

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Attorneys for Respondents

(3)

NO. 90-967

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

GUY WOODDELL, JR.,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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April, 1991

Petition for Writ of Certiorari filed December 12, 1990.
Certiorari granted February 19, 1991
Wooddell v. International Brotherhood of Electrical Workers, Local Union No. 71, et al., Case No. 90-967

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[1] Joint Appendix
[2] Appendix to Petition for Writ of Certiorari

Wooddell v Int'nl. Brthd. of Elec. Workers C-2-86-903
Docket Entries
U.S. District Court

DATE	NR.	PROCEEDINGS
07-25-86	1	COMPLAINT & civil cover sheet summ. issued
08-06-86	2	AMENDED COMPLAINT
08-08-86	3	STIPULATION EXT. TIME 20 days for defts. to answer
08-14-86	4	RET SUMMONS showing cert mail service on 7-28-86
09-09-86	5	MOTION of Deft. for SJ or to Dismiss
09-29-86	6	MOTION of Pltf. for Ext. of time until 11-1-86 to reply to #5
10-06-86	7	ORDER: #6 is Granted. CTC (NMK)
10-30-86	8	BRIEF of Pltf. in Opposition to #5
01-14-87	9	REPLY BRIEF of Deft. in Support of #5
01-14-87	10	MOTION of Deft. for a Protective Order
01-29-87	11	MOTION of Plt.f for leave to file Brief in Response Instanter
02-03-87	12	CORRECTED COPY of deft. Reply Brief
02-06-87	13	REPLY of deft. in Support of #10
02-12-87	14	ORDER: granting #11. CTC(NMK)
02-12-87	15	BRIEF of Pltf. in Response to #10
02-17-87	16	MOTION of Pltf. for leave to file a brief instanter
06-10-87	17	ORDER: denying #10, Pltf. request for sanctions is Denied. Parties have 10 days to ask for reconsideration of this order. CTC(NMK)

08-21-87	18	NOTICE to take deposition of Donna Jarvis on Sept 9, 1987, by Deft.
02-12-88	19	ORDER: parties have 10 days to file additional affidavits. CTC(JLG)
02-22-88	20	STATEMENT of Pltf. in response to #19
02-24-88	21	SUBMISSION by Deft. of Affidavit in Support of #5
02-25-88	22	NOTICE OF WITHDRAWAL of co-counsel for pltf. by Hobson
03-03-88	23	MOTION of Pltf. for Leave to Substitute Affidavit
03-21-88	24	ORDER: # 5 is Granted in part and Denied in part. CTC(JLG)
04-06-88	25	ORDER: granting #23. CTC(NMK)
06-17-88	26	JOINT REPORT of parties to Mag. RE: Mediation
07-18-88	27	ANSWER TO AMENDED COMPLT.
07-19-88	28	MOTION of Defts. for SJ
07-21-88	29	MOTION of Deft. to Strike Jury demand & FOR TRIAL TO THE COURT
07-21-88	30	MOTION of Deft. for leave to file a motion for sj
07-22-88		DEPOSITION of Guy Wooddell, Gregg Sickles, & R.L. Wooddell (2) (4 vol. total)
07-28-88	31	MOTION of Pltf for Continuance of the trial date
08-01-88	32	SUPPLEMENT TO FINAL PRE-TRIAL ORDER of pltf
08-01-88	33	MOTION of defts for lv to file amended answer to amended complaint
08-01-88	34	ORDER: #31 is Denied. CTC(JLG)
08-08-88	35	BRIEF of Pltf. in Opposition to #30
08-08-88	36	BRIEF of Pltf. in Opposition to #29

08-08-88	37	MOTION of Pltf. for Ext. of time to respond to defts. sj motion
08-10-88	38	ORDER: granting #3, pltf will respond by 8-15-88. CTC(JLG)
08-10-88	39	BRIEF of Pltf. in Opposition to #33
08-11-88	40	NOTIFICATION of Deft. of Additional Witnesses
08-11-88	41	MOTION of Pltf. in Limine & to Exclude Evidence
08-15-88	42	BRIEF of Pltf. in Opposition to #28
08-15-88	43	EXHIBITS of Plt.f in Support of #42
08-15-88		CONTINUED DEPOSITIONS of Gregg Sickles and R.L. Wooddell (1 vol. ea.)
08-17-88		CONTINUED deposition of Guy Wooddell Jr. (1 vol.)
08-19-88	44	REPLY MEMO of Deft. in Support of #28
08-22-88		Noticed Jury Selection 8-26-88/10:00 A.M./JLG
08-22-88	45	PROPOSED VOIR DIRE QUESTION by Plt.f
08-22-88	46	SECOND SUPP. of Pltf. to FPT Order
08-25-88	47	MOTION of Pltf. for Reconsideration of the sj ruling & SUPP. BRIEF in Opp. to #44
08-26-88	48	THIRD SUPPLEMENT of Pltf. to the FPT Order
08-26-88	49	MEMO of deft. in Opposition to #41
08-26-88		DEPOSITIONS of Violet Wooddell and Guy Wooddell (2 vol ea.)
08-29-88	50	STIPULATION re:receipt of documents by Local 71 secretary
09-26-88		JURY SELECTION: deft. decided to appeal decision of Judge Grahams on

		certain motions. Jury released.
09-09-88	51	MOTION of defts for lv to file additional authorities or for MOTION for reconsideration
09-12-88	52	**MEMO OPINION AND ORDER (JLG):** Pltf has 10 days to respond to #51. cmtc.
09-15-88		EXCERPTED TRANSCRIPT of 8-29-88 (1 vol.)
09-21-88	53	RESPONSE of Pltf. to #51
10-12-88	54	**ORDER (JLG):** Fraley & Associates to be paid $55.00 for transcript as reflected on Invoice No. 01987. cmtc.
10-19-88	55	ORDER: granting defts. motion for sj, Judgment for deft. CTC(JLG)
10-19-88	56	JUDGMENT ENTERED as to #55. CTC
11-16-88	57	NOTICE OF APPEAL by pltf of 10-19-88 judgment ctc
11-18-88	--	RECORD TRANSMITTED TO USCA 6th: 2 vol of pleadings 1 vol of transcript
12-19-88		EXCERPT TRANSCRIPT of 8-29-88 (1 vol.)

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GUY WOODDELL, JR.	)	**CASE NO. C2-86-0903**
Plaintiff	)	
	)	**JUDGE**
-vs-	)	**(unassigned)**
	)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS Local Union No. 71	)	
-and-	)	
R. L. WOODDELL	)	
-and-	)	
GREGORY SICKLES	)	**AMENDED COMPLAINT**
Defendants	)	**(JURY DEMAND)**

I. JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 28 USC Sec. 1331 and pursuant to Title I, Sec. 102 of the Labor Management Reporting and Disclosure Act (LMRDA, 29 USC Sec. 412) to redress those rights secured to Plaintiff by virtue of 29 USC Sec. 411, et seq. Plaintiff brings this action for damages, injunctive relief and attorney's fees as a result

of the infringement of those rights by Defendants.

The jurisdiction of this Court is also invoked pursuant to the Labor Management Relations Act (LMRA, 29 USC Sec. 185) to redress those rights secured to Plaintiff under the Constitution of the International Brotherhood of Electrical Workers (IBEW), the By-laws of IBEW, Local Union No. 71, various collective bargaining agreements including the Agreement between the Greater Cleveland Chapter of the National Electrical Contractors Association and Local Union No. 71, IBEW, and the duty of fair representation owed to Plaintiff by Defendant, Local Union No. 71, IBEW.

The jurisdiction of this Court is also invoked to hear and decide all pendent claims arising under state law.

II. PARTIES

2. Plaintiff, Guy Wooddell, Jr., is and was at all relevant times a member in good standing of the International Brotherhood of Electrical Workers, Local Union No. 71 (hereinafter, Local 71). He is a citizen of the United States and the State of Ohio. He resides within the territorial jurisdiction of this Court.

3. Defendant, Local 71, is an unincorporated association that is a "labor organization" (within the meaning of 29 USC Sec. 401 et seq.) and is and was at all relevant times the local labor organization of which Plaintiff was a member and the exclusive statutory bargaining agent for Plaintiff. Local 71's main office is located within the territorial jurisdiction of this Court. Local 71 transacts its business within the territorial jurisdiction of this Court.

4. Defendant, R.L. Wooddell, is and was at all relevant times the President of Local 71. He is sued in his individual

and official capacity. He resides within the territorial jurisdiction of this Court. He transacts business on behalf of Local 71 within the territorial jurisdiction of this Court.

5. Defendant, Gregory Sickles, is and was at all relevant times the Business Manager of Local 71. He is sued in his individual and official capacity. He resides within the territorial jurisdiction of this Court. He transacts business on behalf of Local 71 within the territorial jurisdiction of this Court.

III. STATEMENT OF FACTS

6. Beginning in early January of 1986, various officers of Defendant Local 71, including Defendant R. L. Wooddell, commenced a campaign within Local 71 to amend the By-laws of Local 71.

7. The proposed amendment was designed to raise union dues and assessments.

8. Plaintiff was opposed to the proposed By-laws amendment.

9. On about January 26, 1986, Plaintiff expressed his views, arguments and opinions in opposition to said proposed By-law amendment, to other members of Local 71.

10. Plaintiff also has been opposed to and expressed his views, arguments and opinions in opposition to the appointment of and the continuation in office of the new business manager of Local 71, Defendant, Gregory Sickles.

11. Said defendant was chosen for that position by Defen-

dant, R.L. Wooddell. He is also the son-in-law of Defendant R. L. Wooddell.

12. At all relevant times, Defendant R. L. Wooddell and Defendant Sickles had knowledge of Plaintiff's opposition to the proposed By-law amendment and the appointment and continuation in office of the new business manager of Local 71, Defendant Sickles.

13. On January 27, 1986, in direct retaliation for Plaintiff's expression of his views, arguments and/or opinions about the proposed By-law amendment and the new business manager, Defendant R. L. Wooddell threatened Plaintiff with economic discrimination by indicating that Plaintiff would never work again in Local 71.

14. Subsequent to the initial threats, Defendant R. L. Wooddell repeated these threats to others and made other threats including threats upon Plaintiff's life.

15. Since January 27, 1986, Defendants Local 71, Gregory Sickles and R. L. Wooddell have caused Plaintiff to be subjected to economic discrimination and discipline in direct retaliation for Plaintiff's expression of his opinions, arguments or views, in violation of LMRDA, by depriving him of the ability to be employed by employers having collective bargaining agreements with Local 71.

16. Local 71 operates a hiring hall referral system for its members by virtue of which said members become employed by employers having collective bargaining agreements with Local 71.

17. Under Local 71's hiring hall referral system, Plaintiff, who was properly classified as a Group I member, would have been regularly employed by employers having collective

bargaining agreements with Local 71 since January 27, 1986 but for the retaliatory economic discrimination against Plaintiff by Defendants.

18. Various collective bargaining agreements to which Local 71 is a party including the Agreement between the Greater Cleveland Chapter of National Electrical Contractors Association and Local 71, and the agreement known as the Fourth District Outside Power and High Tension Pipe Type Cable Agreement between American Line Buildings Chapter N.E.C.A. and IBEW, provide for a referral procedure.

19. Under these procedures, employee-members, such as Plaintiff, are to be registered in the highest priority group in the classification for which he or she qualifies.

20. Under Classification A (Journeyman, Lineman, etc.) Plaintiff has at all relevant times fulfilled all the requirements of the highest priority Group known as Group I.

21. Nonetheless, employee members who qualify only for the Group II priority group, or lower, have been referred to employers for employment while Plaintiff was not so referred.

22. On about January 28, 1986, in direct retaliation for Plaintiff's expression of his views, arguments and opinions, Defendant R. L. Wooddell filed charges against Plaintiff, purportedly pursuant to the Constitution of the IBEW, alleging violations of Article XXVII, Sec. 1, Subsection (1)(7) of the Constitution.

23. On about February 24, 1986, Defendant R. L. Wooddell caused a letter to be sent to Plaintiff setting the charges

against Plaintiff for a hearing. Although the notice was required to be signed by the Recording Secretary and appeared to bear his signature upon information and belief, Plaintiff asserts that Defendant R. L. Wooddell actually signed the Recording Secretary's name, without his authorization.

24. Defendant R. L. Wooddell's charges against Plaintiff were heard by the Executive Board of Local 71 on March 14, 1986. Despite the fact that the charges had been filed by Defendant Wooddell, (and he was obviously not impartial) said defendant presided over the hearing on said charges. No decision of the Executive Board has yet been made known to Plaintiff concerning said charges.

25. On May 29, 1986, Defendants continued their course of economic discrimination against Plaintiff by wrongfully transferring Plaintiff from Group I to Group II of the Referral Procedure without basis in fact.

26. As a result of Defendants' conduct, Plaintiff has been damaged by the loss of employment; the loss of wages; the loss of fringe benefits; the loss of his rights under the LMRDA; the relevant collective bargaining agreements; the IBEW Constitution, and the By-laws of Local 71; damage to his reputation; pain, suffering and distress; all to his damage. Plaintiff is being irreparably damaged, without adequate remedy at law.

27. As a result of Defendants' conduct, Plaintiff was required to retain the services of counsel to protect his rights and render a common benefit to the membership of Local 71.

28. Defendants' conduct was committed willfully, wantonly and with actual malice.

29. There is no requirement under the By-laws of Local 71 and the Constitution of IBEW for Plaintiff to exhaust his internal union remedies; nonetheless, Plaintiff has exhausted such remedies for more than four months.

30. Any further exhaustion attempts would be futile and would cause Plaintiff irreparable damage.

IV. FIRST CLAIM FOR RELIEF

31. Plaintiff incorporates by reference herein all previous allegations.

32. Defendants' actions constitute unlawful economic discrimination and discipline in retaliation for Plaintiff's exercise of the rights guaranteed by Title I of LMRDA, in violation of LMRDA (including 29 USC Sec.s 411, 412 and 529).

33. As a result of Defendants' conduct Plaintiff has been damaged in the manner set forth in paragraphs 21 and 22 above.

V. SECOND CLAIM FOR RELIEF

34. Plaintiff incorporates by reference herein all previous allegations.

35. Defendants' actions deprived Plaintiff of his right to a full and fair hearing in violation of LMRDA (29 USC Sec.s 411, 412 and 529).

36. As a result of Defendants' conduct, Plaintiff has been damaged in the manner set forth in paragraphs 21 and 22 above.

VI. THIRD CLAIM FOR RELIEF

37. Plaintiff incorporates by reference herein all previous allegations.

38. Article XXVII, Sec. 5 of the IBEW Constitution requires that a member charged with misconduct or offenses under said article "shall be granted a fair and impartial trial."

39. Said article is also part of the By-laws of Local 71 pursuant to Article XVII, Sec. 7 of the IBEW Constitution.

40. Article I, Sec. 2 of the By-laws of Local 71 indicate that it is the object of the Local Union "to promote by all proper means the material and intellectual welfare of its members."

41. Article XV, Sec. 1 of the By-laws of Local 71 require that "a copy of the charges must be furnished to the accused, by the Recording Secretary with notice of when to appear before the Trial Board."

42. Defendant Sickles, as business manager, is responsible for devising a means for the handling of jobs for unemployed members.

43. Pursuant to Article XV, Sec. 7 of the By-laws of Local 71, he is required to devise a means of distributing the available jobs to qualified members which are practical and fair.

44. Article XVII, Sec. 10 of the IBEW Constitution requires all Local Unions to live up to all collective bargaining agreements.

45. Pursuant to Article XIX, Sec. 1 of the IBEW

Constitution, the Local Union President "shall be held responsible for the strict enforcement of this Constitution and the rules therein and the Local Union By-laws. He shall be held personally liable..."

46. The above-described provisions of the By-laws of Local 71 and the IBEW Constitution are contracts which are binding upon Local 71.

47. Defendants' conduct breached said contracts in violation of 29 USC Sec. 185 and Ohio law.

48. As a result of said breach, Plaintiff was injured in the manner set forth in paragraphs 26 and 27, above.

VII. FOURTH CLAIM FOR RELIEF

49. Plaintiff incorporates by reference herein all previous allegations.

50. Local 71 is the exclusive bargaining representative for Plaintiff. As such, it owes Plaintiff a duty of fair representation pursuant to 29 USC Sec. 185.

51. Defendants' conduct constituted a breach of said duty of fair representation.

52. As a result of said breach, Plaintiff was injured in the manner set forth in paragraphs 26 and 27, above.

VIII. FIFTH CLAIM FOR RELIEF

53. Plaintiff incorporates by reference herein all previous allegations.

54. Defendants' conduct constitutes an intentional interference with Plaintiff's contractual relations.

55. As a result of Defendants' conduct, Plaintiff has been injured in the manner set forth in paragraphs 26 and 27, above.

IX. SIXTH CLAIM FOR RELIEF

56. Plaintiff incorporates by reference herein all previous allegations.

57. Defendants' conduct constitutes the intentional infliction of emotional distress upon Plaintiff.

58. As a result of Defendants' conduct, Plaintiff has been injured in the manner set forth in paragraphs 26 and 27, above.

WHEREFORE, Plaintiff demands:

1. Judgment against Defendants, jointly and severally;

2. An order temporarily and permanently enjoining Defendants from effectuating retaliatory economic discrimination against Plaintiff;

3. An order restoring Plaintiff to Group I of the Referral Procedure;

4. All lost wages and fringe benefits;

5. Additional compensatory damages in the amount of Ten Thousand Dollars ($10,000.00);

6. Punitive damages in the amount of Ten Thousand Dollars ($10,000.00);

7. Reasonable attorney fees; and

8. Such other relief as this Court may deem equitable and appropriate under the circumstances.

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ATTORNEYS FOR
PLAINTIFF

JURY DEMAND

Plaintiff demands a trial by jury.

THEODORE E. MECKLER
Trial Attorney for Plaintiff

SERVICE

A copy of the foregoing was sent by regular U.S. mail on this ____ day of August, 1986 to International Brotherhood of Electrical Workers, (IBEW) Local Union No. 71, 5255 West Broad Street, Columbus, Ohio 43228; R. L. WOODDELL, c/o IBEW, Local 71, 5255 West Broad Street, Columbus, Ohio 43228; and to GREGORY SICKLES, c/o IBEW, Local 71, 5255 West Broad Street, Columbus, Ohio 43228.

THEODORE E. MECKLER
Trial Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GUY WOODDELL, JR.	)	CASE NO.
	)	C2-86-0903
Plaintiff,	)	
	)	JUDGE JAMES
v.	)	GRAHAM
	)	
IBEW LOCAL 71, et al.,	)	
	)	
Defendants.	)	

AMENDED ANSWER TO AMENDED COMPLAINT

Now come the defendants, International Brotherhood of Electrical Workers, Local Union 71, and R.L. Wooddell, and Gregg Sickles, and for their Answer to the Amended Complaint states as follows:

FIRST DEFENSE

1. Defendants admit the allegations in paragraphs, 6, 7, 8, 16, 18, 39, 40, 41, 44, 45, and 46 of the Amended Complaint.

2. Defendants deny the allegations in paragraphs 9, 10, 13, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 42, 43, and 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58 of the Amended Complaint.

3. As regards the allegations in paragraph 1 of the Amended Complaint, the defendant admit that this Court has jurisdiction to hear the causes of action under 29 U.S.C. 412. They deny that this Court has jurisdiction to hear a claim by a Union

member based on the Constitution of the Union. They deny each and every other allegation not admitted in that paragraph.

4. As regards the allegations in paragraph 2 of the Amended Complaint, they deny that Guy Wooddell, Jr. has been a member in good standing of I.B.E.W. Local 71 since he was admitted. There have been several times that he lost his status as a member in good standing. They deny each and every other allegation in the paragraph not admitted.

5. As regards the allegations in paragraph 3 of the Amended Complaint, defendants admit that Local 71 has been a labor organization; they deny that it has been the exclusive staturoty bargaining agent at all times for plaintiff.

6. As regards the allegation in paragraph 4 of the Amended Complaint, they admit that defendant R.L. Wooddell is and at all times relevant was the President of Local 71. He resides within the territorial jurisdiction of this Court. They deny each and every other allegation in that paragraph not admitted.

7. As regards the allegations in paragraph 5 of the Amended Complaint, they admit that defendant Gregg Sickles is and at all times relevant was the Business Manager of Local 71. He resides within the territorial jurisdiction of this Court. They deny each and every other allegation of that paragraph.

8. As regards the allegation in paragraph 11 of the Amended Complaint, they admit that Mr. Sickles is the son-in-law of R.L. Wooddell. They deny each and every other allegation in that paragraph.

9. As regards the allegations in paragraph 12 of the

Amended Complaint, they admit that defendants Wooddell and Sickles had knowledge of plaintiff Wooddell's opposition to the proposed increase in dues assessment. They deny each and every other allegation in that paragraph.

10. As regards the allegations in paragraph 38 of the Amended Complaint, they admit that a member may be penalized for committing one or more of the following offenses and shall be granted a fair and impartial trial according to Article 27, Section 25 of the I.B.E.W. Constitution. They deny each and every other allegation in that paragraph.

SECOND DEFENSE

11. Plaintiff failed to exhaust his internal union remedies.

THIRD DEFENSE

12. Plaintiff failed to exhaust his internal contractual remedies.

FOURTH DEFENSE

13. The claims of the plaintiff fall within the exclusive jurisdiction of the National Labor Relations Board and are therefore preempted.

FIFTH DEFENSE

14. Plaintiff failed to bring this cause within time required by the appropriate statute of limitations.

SIXTH DEFENSE

15. Plaintiff failed to state a cause of action upon which relief can be granted.

SEVENTH DEFENSE

16. Plaintiff has failed to mitigate his damages.

EIGHTH DEFENSE

17. Plaintiff's claims are barred by the doctrine of collateral estoppel.

WHEREFORE, defendants request that this action be dismissed, costs be assessed against the plaintiff, and that plaintiff pay reasonable attorney fees of the defendant.

Frederick G. Cloppert, Jr.
Cloppert, Portman, Sauter,
Latanick & Foley
225 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 461-4455

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Answer to Amended Complaint was served by first class U.S. mail, postage prepaid, upon Theodore E. Meckler, Meckler & Meckler Co., L.P.A., 614 Superior Ave., N.W. Suite 1350, Cleveland, Ohio 44113, this 1st day of August, 1988.

Frederick G. Cloppert, Jr.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS IBEW

CONSTITUTION

And Rules for Local Unions and Councils under its jurisdiction

As amended at the 32nd Convention,
Los Angeles, California,
September, 1982

PLAINTIFF'S EXHIBIT 10

ARTICLE XVII RULES FOR LOCAL UNIONS

Sec. 1. No L.U. shall meet more than twice monthly unless specifically called. Special meetings may be called only by the business manager, railroad general chairman, or the L.U. Executive Board.

Sec. 2. Each L.U. shall adjourn its meetings not later than 11 p.m. prevailing time, and no other meetings shall be held on the same day or night. Any action taken after this hour shall be null and void. Anyone presiding over the meeting shall be held personally liable and subject to penalty from the I.P. for permitting violation of this provision. (When a L.U.'s members are engaged in operations of a continuous nature, and it is impossible or impractical to comply with the above provision, the I.P. may grant special dispensation in such cases.)

Sec. 3. Any L.U. failing to hold a regular meeting for a period of one month shall forfeit its charter, unless it shows good cause for not doing so. Seven (7) members in good standing shall constitute a quorum, provided the L.U. has a membership of twenty- five (25) or more. If the L.U. has less than twenty-five (25) members, then five (5) shall constitute a quorum.

Subject to the same penalty for not holding a meeting, each L.U. - any of whose members belong to the E.W.B.A. - shall, at not less than one meeting every month, before or after the regular L.U. meeting, hold a meeting of the local lodge, composed of its members who are also members of the E.W.B.A. At the meeting of the E.W.B.A. lodge, no member of the I.B.E.W. who is not also a member of the E.W.B.A. shall vote or participate therein.

Sec. 4. L.U.'s shall affiliate, or shall not affiliate, with state, provincial, central or trades councils or bodies, as decided by the I.P.

Sec. 5. No L.U. shall allow any member who becomes an electrical employer, or a partner in an electrical employing concern, to hold office in the L.U. or attend any of its meetings, or vote in any election of a L.U. The L.U. shall allow such a member to continue his membership in the L.U. or take a withdrawal card for deposit in the I.O.

Sec. 6. L.U.'s are empowered to make their own bylaws and rules, but these shall in no way conflict with this Constitution. Where any doubt appears, this Constitution shall be supreme. All bylaws, amendments and rules, all agreements, jurisdiction, etc., of any kind or nature, shall be submitted in duplicate form to the I.P. for approval. In the case of agreements, however, additional copies are required by the I.O. Therefore, six (6) signed copies of construction trades agreements or amendments and five (5) signed copies of all other agreements or amendments shall be submitted to the I.P. No L.U. shall put into effect any bylaw, amendment, rule or agreement of any kind without first securing such approval. All these shall be null and void without I.P. approval. The I.P. has the right to correct any bylaws, amendments, rules or agreements to conform to this Constitution and the policies of the I.B.E.W.

Approval of L.U. collective bargaining agreements by the I.P. does not make the International a party to such agreements unless the I.P. specifically states in writing that the International is a party to any such agreement.

Sec. 7. This Constitution and the rules herein shall be considered a part of all L.U. bylaws and shall be absolutely

binding on each and every L.U. member.

Sec. 8. All L.U. bylaws or rules in conflict with this Constitution and the rules herein are null and void.

Sec. 9. Except when decided otherwise by the I.P., agreements between L.U.'s and employers must contain a condition that the L.U. is part of the I.B.E.W. and that a violation or annulment of agreement with any L.U. annuls all agreements entered into with the same employer, corporation or firm and any other L.U. of the I.B.E.W.

Sec. 10. All L.U.'s shall be compelled to live up to all approved agreements unless broken or terminated by the other party or parties, which fact shall first be ascertained by the I.P. No agreement of any kind or nature shall be abrogated without sanction of the I.P.

Sec. 11. No L.U. shall allow its members to work for any employer in difficulty with any other L.U. of the I.B.E.W., providing the I.P. has recognized such difficulty.

Sec. 12. No L.U. shall cause or allow a stoppage of work in any controversy of a general nature before obtaining consent of the I.P. The I.P. or his representative, has the power at any time to enter any situation or controversy involving a L.U. or any of its members, and the decision of the I.P., direct or through his representative, shall be accepted by the L.U. and its officers, subject to appeal to the I.E.C. and I.C.

Sec. 13. No L.U.'s shall by any action, law, rule, agreement or understanding, refuse to furnish members to, or prevent their members working for outside employers who have work within their jurisdiction, under the same working

conditions and wages that the L.U. members work for local employers, provided that such outside employers recognize the I.B.E.W. as the collective bargaining agency on their other work.

Sec. 14. Each L.U. has power to adopt, or subscribe to, an apprenticeship system, training program, or helper rules, as the conditions may require. However, such shall not conflict with applicable standards or policies of the I.B.E.W. or to which it is a party.

After such an apprentice has worked one year in the jurisdiction of the L.U., he shall be admitted into the I.B.E.W. through the L.U. without further action by the L.U.

Apprentices, helpers and groundmen may or may not have a voice and vote at L.U. meetings or elections as the L.U. decides and as provided in the L.U. bylaws.

Sec. 15. Each L.U. shall have a safety committee which shall: investigate and report serious accidents and fatalities; cooperate with the I.O. on safety matters; promote safety; and cooperate with safety organizations as determined by the L.U. and as directed by the I.O.

Sec. 16. Each L.U. shall establish the amount of its admission fee subject to approval of the I.P. Such fees must be stated in the L.U. bylaws; and in case of a dispute, the fees recorded in the bylaws shall be conclusive of the correct amount.

Sec. 17. In no case shall a L.U. charge any member of the I.B. E.W. an examination fee.

Sec. 18. No L.U. shall send out, or approve the sending

out of, financial appeals of any kind without first having consent of the I.P. No L.U. shall recognize or pass upon any financial appeals, etc., it may receive without such appeals having received approval of the I.P.

Sec. 19. Whenever the I.P. deems it necessary to protect or advance the interests of a L.U. and the I.B.E.W., or to organize and protect its jurisdiction, the I.P. may require the L.U. to employ a sufficient number of representatives to cover the jurisdiction or territory involved.

Sec. 20. Railroad L.U.'s shall join Railroad System Federations and System or Regional Councils where such are formed. Railroad L.U.'s must contribute to the support of and conform to the laws of Railroad Council's where such are formed. Railroad L.U.'s shall cooperate in the manner directed by the International Officer in charge of railroad matters with such organizations as he may decide.

Sec. 21. L.U.'s outside the railroad industry may form System Councils for bargaining purposes, with approval of the I.P., and shall do so when directed by the I.P. Where formed, the L.U.'s affected or involved shall affiliate, and remain so, and shall pay for the support of, and conform to the approved bylaws of, such System Councils.

The I.S. shall grant a charter to such System Council when authorized by the I.P. The type of work and the territory or jurisdiction covered by the charter must be defined in the approved bylaws. Each delegate to the System Council shall be elected in the same manner as are the officers of the L.U. he represents.

Such System Councils, and their officers and representatives, shall be subject to and be governed by the same rules and laws (where such apply to them) as appear in this

Constitution for L.U.'s

Sec. 22. No L.U. shall withdraw from the I.B.E.W. or dissolve as long as five (5) members in good standing object thereto. Before withdrawal, written notice must be given to the I.P., and all books, papers, charters, funds and all property are to be forwarded to the I.S.

Sec. 23. L.U.'s Railroad Councils or System Councils whose charters have been revoked or suspended for violation of this Constitution, or for noncompliance with decisions rendered by proper International authority, shall have no right or power to take any action, except actions necessary to comply with the Constitution or decisions rendered by proper I.B.E.W. authority. After such action has been taken, no further action can be taken until notice from the I.P. is received that revocation or suspension has been terminated.

Parliamentary Rules

1. The chairman may save time in deciding certain questions by asking if there are any objections. If there are none, he shall declare an action adopted.

2. He shall not allow any member of the L.U. to speak more than once on the same subject until all members desiring the floor have spoken, and not more than twice, and not more than seven minutes at any one time, except those making reports.

3. Sectarian discussions shall not be permitted under any circumstances.

4. When members desire all talk or debate stopped and a vote taken, they may call for the previous question. When this is done it shall be put to a vote at once in this form: "Shall all debate be closed and the main question voted upon?" If this carries by a majority vote, then a vote shall be taken at once on the question before the meeting.

5. An appeal may be taken at the meeting on any ruling of the chairman, but not when a question of law is involved. When an appeal is taken to the meeting, the chairman shall state it in these words: "Shall the decision of your chairman be upheld?" The member making the appeal shall then state his grounds and the chairman shall give the reason for his decision. The vote shall then be taken without further debate.

6. A question can be reconsidered only at the same meeting or at the next regular meeting. If reconsidered at the same meeting, a majority vote is sufficient. If reconsidered at the next meeting, a two-thirds vote is required. A motion to reconsider must be made and seconded by two members who voted with the majority.

7. A motion can be amended only twice.

8. If a motion has been amended, then the amendment shall be voted upon first. If more than one amendment has been offered, then the vote shall be first on the amendment to the amendment; next on the amendment to the motion; and last on the original motion.

9. Motions to lay on the table, or to read a paper or document, or to adjourn, are not debatable.

10. All resolutions and resignations must be submitted in writing.

11. All other parliamentary questions not decided in these rules shall be decided by Robert's Rules of Order, revised.

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ARTICLE XIX DUTIES OF LOCAL OFFICERS

President

Sec. 1. The L.U. President shall be held responsible for the strict enforcement of this Constitution and the rules herein and the L.U. bylaws. He shall be held personally liable and subject to penalty by the I.P. for failure to conduct orderly meetings or failure to carry out the responsibilities and duties imposed upon him herein.

He is empowered and shall do as follows:

(1) Preside at all meetings of the L.U. and see that each meeting is promptly adjourned not later than 11 p.m. prevailing time. When he deems it necessary to preserve order, he shall appoint members to aid him in doing so and in carrying out his rulings.

(2) He shall promptly have removed from the meeting room any intoxicated member, any disturber, or anyone not conducting himself in an orderly way, or anyone who disturbs the harmony or peace of the meeting, or who fails promptly to abide by his rulings or the action of the meeting. He shall suspend from attendance at any meeting any member who commits any of these offenses, for the balance of such meeting, and he shall see to it that such member shall not be allowed to reenter the meeting for the remainder of the meeting. He may repeat the sentence of suspension at any subsequent meeting at which an offender persists in such

conduct.

(3) He shall decide all questions of order according to the parliamentary rules stated herein, and have the deciding vote in case of a tie, and see that all assessments are paid and all penalties enforced.

(4) He shall appoint all committees, act as an exofficio member of all committees, appoint all delegates to central, trades, and political councils or bodies, with which the L.U. is affiliated. Where the L.U. has a business manager, then he and any of his assistants shall be named by the president as delegates to the Building and Construction Trades Council and to the Metal Trades Council; and he shall appoint the registrar as delegate to conferences of bodies on political education and activity with which the L.U. is affiliated.

(5) He shall see that all committees perform the duties assigned to them within a reasonable time. He shall promptly remove any committee member not performing his duties and appoint another.

He shall see that the registrar promotes political education and activity as determined by the L.U., keeps such records as are found to be necessary to encourage all members to register and vote, and keeps the membership informed on candidates worthy of support and pending legislation of vital importance to the country, the community, and the members of the L.U.

(6) He shall either appoint an auditing committee of three members, or he or the L.U. Executive Board, as the L.U. decides, shall employ a public accountant to audit the books and accounts of the L.U. every three months, and he shall inspect the bank book or books of the treasurer to see

that L.U. moneys turned over to the treasurer have been properly and promptly deposited in the name of the L.U.

(7) He shall see that all funds of the L.U. are deposited in a reputable bank or banks in the name of the L.U. subject to withdrawal by check signed in the name of the L.U. and countersigned by the president and treasurer, and see that no disbursements are made except on an order countersigned by the R.S. and himself after action of the L.U. However, no action of the L.U. is necessary to pay regular or standing bills such as rent, salaries, and payments due the I.S.

(8) He shall notify in writing any bank, or all banks, in which the L.U. makes deposits, that the L.U. empowers the I.P. to stop withdrawal of any L.U. funds when in the judgment of the I.P. such action is necessary to protect the L.U. and its members. He shall notify such bank or banks that they are to honor and abide by any notice from the I.P. to stop withdrawals should the occasion arise. He shall send to the I.S. a copy of such letter or notice to any bank or banks to be made a matter of record.

(9) He shall see that the amount of bonds on the L.U. officers and employes is sufficient to protect the L.U. against any loss. The minimum bond shall be $2,500, and the bonds are to be made through the I.O.

(10) He shall cooperate with the business manager of the L.U., if the L.U. has one, and shall not work in conflict with him. Where the L.U. has no business manager, the president shall keep accurate statistics, or see to it that such statistics as required by the I.P. are kept by the F.S. or person designated, and shall cooperate fully with the Research Department of the I.B.E.W.

He shall perform such other duties as are prescribed herein, or may be assigned to him by his L.U. when such duties are not in conflict with this Constitution and these rules.

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Business Manager

(Where a Local Union has one)

Sec. 8. The business manager shall be held responsible to the L.U. and to the I.P. for results in organizing his territory, for establishing friendly relations with employers, and for protecting the jurisdiction of the I.B.E.W. It shall be his responsibility to keep accurate statistics, or to see that such statistics as required by the I.P. are kept, and shall cooperate fully with the Research Department of the I.B.E.W.

He shall attend all meetings of the L.U. Executive Board and have a voice but no vote. He shall have such authority and perform such other duties as are provided in this Constitution or may be provided for in the L.U. bylaws.

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ARTICLE XXVII — MISCONDUCT, OFFENSES AND PENALTIES

Sec. 1. Any member may be penalized for committing any one or more of the following offenses:

(1) Violation of any provision of this Constitution and the rules herein, or the bylaws, working agreements, or rules of a L.U.

(2) Having knowledge of the violation of any provision of

this Constitution, or the bylaws or rules of a L.U., yet failing to file charges against the offender or to notify the proper officers of the L.U.

(3) Obtaining membership through fraudulent means or by misrepresentation, either on the part of the member himself or others interested.

(4) Engaging in activities designed to bring about a withdrawal or secession from the I.B.E.W. of any L.U. or of any member or group of members, or to cause dual unionism or schism within the I.B.E.W.

(5) Engaging in any act or acts which are contrary to the member's responsibility toward the I.B.E.W., or any of its L.U.'s, as an institution, or which interfere with the performance by the I.B.E.W. or a L.U. with its legal or contractual obligations.

(6) Working for, or on behalf of, any employer, employer-supported organization, or other union, or the representatives of any of the foregoing, whose position is adverse or detrimental to the I.B.E.W.

(7) Wronging a member of the I.B.E.W. by any act or acts (other than the expression of views or opinions) causing him physical or economic harm.

(8) Entering or being present at any meeting of a L.U., or its Executive Board, or any committee meeting while intoxicated, or drinking intoxicants in or near any such meeting, or carrying intoxicants into such meeting.

(9) Disturbing the peace or harmony of any L.U. meeting or meeting of its Executive Board, using abusive language,

creating or participating in any disturbance, drinking intoxicants, or being intoxicated, in or around the office or headquarters of a L.U.

(10) Making known the business of a L.U., directly or indirectly, to any employer, employer-supported organization, or other union, or to the representatives of any of the foregoing.

(11) Fraudulently receiving or misappropriating any moneys of a L.U. or the I.B.E.W.

(12) Causing or engaging in unauthorized work stoppages or strikes or other violation of the laws and rules of the I.B.E.W. or its L.U.'s.

(13) Wilfully committing fraud in connection with voting for candidates for L.U. office, or for delegates to conventions.

(It shall not be considered an offense when a L.U. mails out - or posts in a conspicuous place - a sample of the official ballot to be used in any L.U. election. However, the sample shall not carry any markings of any kind - except that the word "SAMPLE" shall appear prominently across the face of the ballot. The sample shall otherwise be an exact duplicate of the official ballot to be used.)

(A) Notwithstanding the above, and in addition to the sample ballot, a L.U. may distribute an official publication which shall list all candidates for L.U. office, together with a factual record of activities within the L.U., committee assignments performed, offices held and experience gained for and in behalf of the L.U. This publication shall be prepared under the supervision of the duly designated L.U. Election Board.

(B) The distribution of this official L.U. publication, properly prepared as set forth above, shall not be in violation of Article XVIII, Section 20.

(14) Soliciting advertising for yearbooks, programs, etc., when the name of a L.U. or the I.B.E.W., or the names or pictures of L.U. or International Officers appear in such matter without consent of the I.P. Any member, any officer or representative of any L.U., or other organization coming under the I.B.E.W.'s jurisdiction, shall be held liable for allowing individuals or agencies to solicit such advertising without consent of the I.P. or for in any way violating this provision.

(15) Failure to install or do his work in a safe, workmanlike manner, or leaving work in a condition that may endanger the lives or property of others, or proving unable or unfit mentally, to learn properly his trade.

(16) Causing a stoppage of work because of any alleged grievance or dispute without having consent of the L.U. or its proper officers.

(17) Working for any individual or company declared in difficulty with a L.U. or the I.B.E.W., in accordance with this Constitution.

(18) Willfully committing fraud in connection with obtaining or furnishing credentials for delegates to the I.C. or being connected with any fraud in voting during the I.C.

(19) Allowing another person to use, or altering in any manner, his membership card, receipt, or other evidence of membership in the I.B.E.W.

Any member convicted of any one or more of the above-named offenses may be assessed or suspended, or both, or expelled.

If an officer or representative of a L.U. is convicted of any one or more of the above-named offenses, he may be removed from office or position, or assessed or suspended, or both, or expelled.

Charges and Trials

Sec. 2. All charges, except against officers and representatives of L.U.'s, shall be heard and tried by the L.U. Executive Board which shall act as the trial board in accordance with Article XIX. A majority vote of the board shall be sufficient for decision and sentence.

(This section shall not be construed to conflict with power of the I.P. or the I.E.C. to take action in certain cases as provided in Articles IV and IX.)

Sec. 3. All charges against a member or members must be presented in writing, signed by the charging party, and specify the section or sections of this Constitution, the bylaws, rules or working agreement allegedly violated. The charges must state the act or acts considered to be in violation, including approximate relevant dates or places.

Sec. 4. Charges against members must be submitted to the R.S. of the L.U. in whose jurisdiction the alleged act or acts took place within sixty (60) days of the time the charging party first became aware, or reasonably should have been aware, of the alleged act or acts. The charges shall be read but not discussed at the next regular meeting of the L.U. following the filing of the charges. The R.S. shall immediately send a copy

of such charges to the accused member at his last known address together with written notice of the time and place he shall appear before the trial board.

Sec. 5. The trial board shall proceed with the case not later than forty-five (45) days from the date the charges were filed. The board shall grant a reasonable delay to the accused when it feels the facts or circumstances warrant such a delay. The accused shall be granted a fair and impartial trial. He must, upon request, be allowed an I.B.E. W. member to represent him.

Sec. 6. When the trial board has reached a decision, it shall report its findings, and sentence, if any, to the next regular meeting of the L.U. Such report or action of the board shall not be discussed or acted upon by the L.U. The action of the trial board shall be considered the action of the L.U., and the report of the board shall conclude the case, or cases, except for the accused having the right to appeal to the I.V.P., then to the I.P., then to the I.E.C. and then to the I.C. However, the board may reopen and reconsider any case or cases when it feels the facts or circumstances justify doing so anytime within thirty (30) days from the date decision was rendered. The board shall reopen any case or cases when directed to do so by the I.V.P. or the I.P.

Sec. 7. If the accused willfully fails to stand trial - or attempts to evade trial - the trial board shall proceed to hear and determine the case just as though the accused were present.

Trials of Officers and Representatives

Sec. 8. All charges against an officer or representative of a L.U. must be presented in writing, signed by the charging

party, and specify the section or sections of this Constitution, the bylaws, rules or working agreement violated. The charges must state the act or acts considered to be in violation, including approximate relevant dates and places; and must be made within sixty (60) days of the time the charging party first became aware, or reasonably should have been aware, of the alleged act or acts.

Such charges must be filed with the I.V.P. in whose district the L.U. is located where the alleged act or acts took place, or as directed by the I.P., should more than one district be involved. However, if such charges are against an officer or representative of a railroad L.U., or an officer, general chairman or representative of a Railroad Council, these shall be filed with the I.V.P. in charge of railroad matters.

(This section shall not be construed to conflict with power of the I.P. or the I.E.C. to take action in certain cases as provided in Articles IV and IX.)

Sec. 9. The I.V.P. shall pass upon and determine such case or cases, with the accused having the right of appeal to the I.P., then to the I.E.C., then to the I.C. Any such appeal, to be recognized, must be made within thirty (30) days from the date of the decision appealed from. No appeal from the I.V.P. shall suspend operation of any decision.

Sec. 10. The I.V.P. may require that all evidence, testimony, or statements be submitted to him in writing for review, decision and sentence (if any) or he may hear the case in person. If he so decides, he may appoint a referee, who may or may not be a member, to take testimony and report to him.

Sec. 11. The I.V.P. may reopen any case or cases when

there is new evidence or testimony, facts or circumstances, which he feels are sufficient to justify such being done.

Appeals

Sec. 12. Any member who claims an injustice has been done him by any L.U. or trial board, or by any Railroad Council, may appeal to the I.V.P. any time within forty-five (45) days after the date of the action complained of. If the appeal is from an action of a railroad local union, or a Railroad Council, it must go to the I.V.P. in charge of railroad matters.

A copy of any appeal must be filed with the L.U., or with the Railroad Council, as the case may be.

Sec. 13. No appeal for revocation of an assessment shall be recognized unless the member has first paid the assessment, which he can do under protest. When the assessment exceeds twenty-five dollars ($25.00), payments of not less than twenty dollars ($20.00) in monthly installments must be made. The first monthly installment must be made within fifteen (15) days from the date of the decision rendered and monthly installments continued thereafter or the appeal will not be considered.

Sec. 14. When a decision has been rendered by the I.V.P. it shall become effective immediately.

Sec. 15. No appeals from decisions of the I.V.P., or from the I.P., or from the I.E.C., shall be recognized unless the party or parties appealing have complied with the decision from which they have appealed. However, this section may be waived by the party making the decision if good and sufficient reasons are furnished and he is requested to do so.

Sec. 16. Appeals to the I.P. and to the I.E.C., and to the Convention, to be considered, must be made within thirty (30) days from the date of the decision appealed from. (Appeals to the I.E.C. and to Conventions must be filed with the I.S.) If no appeal is made within thirty (30) days from the date that any decision is rendered, such decisions shall be considered final.

Sec. 17. Any member penalized or otherwise disciplined for an offense may appeal.

Sec. 18. When an appeal is taken above the I.V.P., only the evidence submitted in the original case of appeal shall be considered.

In cases where parties claim they have new and important evidence affecting a case in which decision has been rendered, they may submit this within thirty (30) days to the authority who rendered the first decision, with a request that the case be reopened. Such authority shall decide whether the matter submitted justifies reopening the case.

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ARTICLE XXVIII JURISDICTION

Sec. 1. The charter issued this organization by the American Federation of Labor states that it was granted "for the purpose of a thorough organization of the trade."

There must be a systematized knowledge of the science of electricity in all of its various applications of electron transfer and electromagnetism. This requires a thorough understanding of the many means of production, transference, control and utilization of electricity and of the foundation or

preparatory work to be performed. It is quite necessary, therefore, that the jurisdiction of the I.B.E.W. be recognized as one covering:

(a) The manufacture, assembling, construction, installation or erection, repair or maintenance of all materials, equipment, apparatus and appliances required in the production of electricity and its effects.

(b) The operation, inspection and supervision of all electrical equipment, apparatus, appliances, or devices by which the energy known as electricity is generated, utilized and controlled.

Sec. 2. Electrical workers shall be organized under five general branches of the I.B.E.W., namely: Outside and Utility Workers; Inside Electrical Workers; Communications Workers; Railroad Electrical Workers and Electrical Manufacturing Workers.

Sec. 3. Keeping in mind progress for the I.B.E.W., and that all electrical work be done by its members, it is impractical to classify or divide jurisdiction of work in every detail between the various branches in this organization to meet all situations in all localities. Therefore, the classifications and divisions outlined below are necessarily of a general nature, and L.U.'s whose jurisdiction with other L.U.'s of the I.B.E.W., or whose agreements are harmonious and conducive to the progress of the I.B.E.W., shall not be disturbed. But when harmony and progress do not prevail, or when disputes arise, the I.P. shall determine what L.U. will do certain work or jobs, consistent with the progress and best interests of the I.B.E.W. in obtaining and controlling the work in question.

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AGREEMENT

BETWEEN

THE GREATER CLEVELAND CHAPTER

NATIONAL ELECTRICAL

CONTRACTORS ASSOCIATION

AND

LOCAL UNION NO. 71

INTERNATIONAL BROTHERHOOD

OF ELECTRICAL WORKERS

MAY 1, 1983 TO APRIL 30, 1986

PLAINTIFF'S EXHIBIT 13

ARTICLE V

REFERRAL PROCEDURE

In the interest of maintaining an efficient system of production in the industry, providing for an orderly procedure of referral of applicants for employment, preserving the legitimate interests of the employees in their employment status within the area and of eliminating discrimination in employment because of membership or non-membership in the Union, the parties hereto agree to the following system of referral of applicants for employment.

1. The Union shall be the sole and exclusive source of referrals of applicants for employment.

2. The Employer shall have the right to reject any applicant for employment.

3. The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the Union, or because of race, creed, color or national origin, and such selection and referral shall not be affected in any way by rules, regulations, by-laws, constitutional provisions or any other aspect of obligation of Union membership policies or requirements. When workmen are requested by the Employer, such request shall be in writing, dated properly and signed by the Employer or his authorized representative. All verbal, or telephone requests shall be confirmed immediately in writing same as the foregoing requirements. All such selection and referral shall be in accordance with the following procedure.

4. The applicable Local Union shall maintain a register of

applicants for employment established on the basis of the classifications and groups listed below. Each applicant for employment shall be registered in the highest priority group in the classification or classifications for which he qualifies.

CLASSIFICATION A
JOURNEYMEN LINEMAN - EQUIPMENT OPERATOR - CABLE SPLICER

GROUP 1. All applicants for employment who have three or more years experience in the trade, are residents of the geographical area constituting a specific normal construction labor market, have passed a Journeyman's examination given by a duly constituted Local Union of the I.B.E.W., and who have been employed in this specific normal construction labor market area for a period of at least one year in the last three years under a collective bargaining agreement between the parties to this Agreement.

GROUP II. All applicants for employment who have three or more years experience in the trade and who have passed a Journeyman's examination given by a duly constituted Local Union of the I.B.E.W.

GROUP III. All applicants for employment who have two or more years experience in the trade, are residents of the specific normal construction labor market area in which they are applying for employment, and who have been employed in this specific normal construction labor market area for at least six months in the last three years in the trade under a collective bargaining agreement between the parties to this Agreement.

GROUP IV. All applicants for employment who have worked at the trade for more than one year.

CLASSIFICATION B
TRUCK DRIVER - TRUCK DRIVER (WINCH) - GROUNDMAN

GROUP I. All applicants for employment who have experience in the trade, are residents of the geographical area constituting a specific normal construction labor market, have passed an examination pertaining to their classification given by a duly constituted Local Union of the I.B.E.W. and who have been employed in this specific normal construction labor market area for a period of at least one year in the last three years under a collective bargaining agreement between the parties to this Agreement.

GROUP II. All applicants for employment who have experience in the trade and who have passed an examination pertaining to their classification given by a duly constituted Local Union of the I.B.E.W.

GROUP III. All applicants for employment who have experience in the trade and are residents of the specific normal construction labor market area, and who have been employed in this normal construction labor market for at least six months in the last three years in the trade, under a collective bargaining agreement between the parties to this Agreement.

GROUP IV. All applicants for employment who have worked at the trade for more than one year.

CLASSIFICATION C
TEMPORARY EMPLOYEES

If the registration list is exhausted and the Union is unable to refer applicants for employment to the Employer within

forty-eight (48) hours from the time of receiving the Employer's request, Saturdays, Sundays, and holidays excepted the Employer shall be free to secure applicants without using the referral procedure, but such applicants, if hired, shall have the status of "temporary employees". The Employer shall notify the Business Manager promptly of the names and Social Security numbers of such temporary employees, and shall replace such temporary employees as soon as registered applicants for employment are available under the referral procedure.

LOCAL UNION - means a Local Union which has jurisdiction over electrical construction work.

RESIDENT - means a person who has maintained his permanent home in the above defined geographical area for a period of not less than one year or who, having had a permanent home in this area, has temporarily left with the intention of returning to this area as his permanent home.

NORMAL CONSTRUCTION LABOR MARKET - is defined to mean the following geographical area:

(a) Outside work in the following counties, State of Ohio:

Champaign County	All
Clark County	All
Coshocton County	All
Cuyahoga County	All
Delaware County	All
Fairfield County	All
Franklin County	All
Geauga County	Bainbridge, Russell and Chester Townships
Guernsey County	All

Knox County	Butler, Clay, College Harrison, Hilliar, Jackson, Milford, Miller, Morgan and Pleasant Townships
Licking County	All
Lorain County	Columbia Township
Madison County	All
Monroe	All
Morgan County	All
Muskingum County	All
Noble County	All
Perry County	All
Pickaway County	Circleville, Derby, Harrison, Jackson, Madison, Monroe, Muhlenberg, Scioto, Walnut, and Washington Townships
Union County	All
Washington County	All

(b) Outside work when performed by Contractors on properties of Utility Companies and R.E.A.'s in the following Counties, State of Ohio:

Brown County	All
Clermont County	All
Clinton County	All
Darke County	All
Greene County	All
Hamilton County	All
Knox County	Butler, Clay, College, Harrison, Hilliar, Jackson, Milford, Miller, Morgan and Pleasant Townships
Licking County	All

Lorain County	All
Medina County	Litchfield and Liverpool Townships
Miami County	All
Montgomery County	All
Preble County	All
Warren County	Clear Creek, Franklin and Wayne Townships

STATE OF KENTUCKY

Boone County	All
Bracken County	All
Gallatin County	All
Kenton County	All
Pendleton County	All

The above geographical area is agreed upon by the parties to include the areas defined by the Secretary of Labor to be the appropriate prevailing wage areas under the Davis-Bacon Act to which this Agreement applies, plus the commuting distance adjacent thereto, which includes the area from which the normal labor supply is secured.

A YEAR AT THE TRADE - shall be defined as eighteen hundred (1800) working hours.

EXAMINATIONS - an "examination" shall include experience rating tests if such examination shall have been given prior to the date of this addendum, but from and after the date of this addendum shall include only written and/or practical examinations given by this Local Union, or any other duly constituted Local Union of the I.B.E.W. Reasonable intervals of time for examinations are specified as six (6) months. An applicant shall be eligible for examination if he

has three years experience at the trade.

5. The Union shall maintain an "Out of Work" list which shall list the applicants within each Group in chronological order of the dates they register their availability for employment. Each daily list shall be retained on file for the disposal of the Appeals Committee.

The Union shall furnish all applicants for registration with a standard application form on which the applicant shall list his name, social security number, present address, phone number and other pertinent information. Signature by applicant certifying that all information given is correct will be required. Any willful falsification of material or work record will be sufficient grounds for rejection of this application.

No applicant shall register on the "Out of Work" list while employed by an Electrical Contractor on work in this jurisdiction. A Separation Slip shall be made in triplicate by the Employer of each terminated employee. One copy shall be issued to the terminated employee, one copy shall be mailed to the Business Manager, and one copy shall be retained by the Employer. The Separation Slip shall be issued immediately upon termination and shall state reason for termination of employment.

An applicant must renew his registration on the register of applicants every thirty (30) days.

An employee who has satisfied the standards established by this Referral Procedure will retain (but not accumulate) his employment seniority under this Agreement in the following circumstances.

(a) When he accepts an office in this Local Union which

requires full time in that office for a specific period.

(b) When he is an employee working for an employer under the terms of this Agreement and is assigned by the Employer to a position outside the bargaining unit but within the electrical industry.

(c) Any applicant for employment who accepts an assignment which proves to be of five days or less duration and is again out of work at the end of that time may have his name placed on the "Out of Work" list within the number of days of the top of the list that the last period of employment consisted.

6. Employers shall advise the Business Manager of the Local Union in the various classifications and the particular types of skills required, the number of applicants needed. The Business Manager shall refer applicants to the Employer by first offering available applicants in GROUP I in order of their places on the "Out of Work" list and then referring applicants in the same manner successively from the "Out of Work" list in GROUP II, and then GROUP III, and then GROUP IV. Any applicant who is rejected by the Employer shall be referred to other employment in accordance with the position of his Group and his place within the Group. The only exceptions which shall be allowed are as follows:

(a) When the Employer states bona fide requirements for special skills and abilities in his request for applicants, the Business Manager shall refer the first available applicant on the register possessing such skills and abilities.

(b) If the age ratio clause in the Agreement calls for the employment of any employee or employees on the basis of age, the Business Manager shall refer the first available

applicant on the register satisfying the applicable age requirements provided, however, that all names in higher priority groups, if any, shall be exhausted before such overage reference can be made.

7. An Appeals Committee is hereby established composed of one member appointed by the Union, one member appointed by the Employer or by the Association, as the case may be, and a Public Member appointed by both of these members. It shall be the function of the Appeals Committee to consider any complaint of any employer or applicant for employment arising out of the administration of the Local Union of Sections 3 to 7 of this Addendum. The Appeals Committee shall have the power to make a final and binding decision on any such complaint which shall be complied with by the Local Union. The Appeals Committee is authorized to issue procedural rules for the conduct of its business, but it is not authorized to add to, subtract from, or modify any provisions of this addendum and its decisions shall be in accord with this addendum.

8. A copy of the referral procedure set forth in this Addendum shall be posted on the Bulletin Board in the offices of the Local Union and in the offices of the Employers who are parties to this Addendum.

9. Apprentices shall be hired and transferred in accordance with the Apprenticeship provisions of the Area Training Agreement.

10. A representative of the Employer, designated in writing to the Local Union, shall have the authority to check the referral procedure records, at any time, during the regular working hours.

....

(4)

No. 90-967

In the
Supreme Court of the United States
OCTOBER TERM, 1990

GUY WOODDELL, JR.,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER

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April 22, 1991

QUESTIONS PRESENTED

1. Is a union member, who sues his union and its officers for money damages for violations of his free speech rights under Title I of the Labor-Management Reporting and Disclosure Act, entitled to a trial by jury under the Seventh Amendment?

2. Does section 301 of the Labor-Management Relations Act create a federal cause of action under which a union member may sue his union for a violation of the union constitution?

PARTIES TO THE PROCEEDING

In addition to the parties listed in the caption, the parties to this proceeding are respondents R.L. "Buck" Wooddell and Gregory Sickles.

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OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Sixth Circuit is reproduced at pages A-1 to A-21 of the Appendix to the Petition for Writ of Certiorari ("Pet. App. A-1 to A-21"). The unreported opinions of the

United States District Court for the Northern District of Ohio are reproduced at Pet. App. A-24 to A-36, A-37 to A-41, and A-42 to A-63.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion on June 27, 1990. That court denied a timely petition for rehearing on September 4, 1990. Pet. App. A-22.

This Court has jurisdiction under 28 U.S.C. § 1254(1). Certiorari was granted on February 19, 1991.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution provides:

Trial by jury in civil cases

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, provides, in relevant part:

Suits by and against labor organizations

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 101(a)(2) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(2), provides:

Freedom of speech and assembly.

> Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

Section 102 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 412, provides, in relevant part:

> Civil action for infringement of rights; jurisdiction. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.

STATEMENT

A. Facts.

Petitioner Guy Wooddell, Jr., is a member in good standing of respondent International Brotherhood of Electrical Workers ("IBEW"), Local Union No. 71. Joint Appendix ("JA") 7. His brother, respondent Buck Wooddell, was at all relevant times the President of Local 71. JA 7. Respondent Gregory Sickles has been the Business Manager of Local 71 since October 14, 1985. JA 7.

This dispute concerns the treatment of petitioner by the respondents. The trouble between the parties became apparent in January 1986 when petitioner openly opposed an announced union dues increase. In previous years, petitioner had been opposed to the selection of respondent Sickles as the Business Manager of the local and to the selection of other officers, as well. After hearing of petitioner's outspoken opposition to the dues increase, respondent Wooddell telephoned petitioner. The conversation quickly became hostile, with respondent Wooddell telling petitioner that, if he persisted in his opposition to the dues increase, he would be "finished" in the union. Pet. App. A-2, A-3.

Shortly after this conversation, respondent Wooddell filed internal union charges against petitioner. On February 24, 1986, Local 71 sent petitioner a notice informing him that he was to appear at a hearing before the union's Executive Board on March 14, 1986. Pet. App. A-3. After consulting an attorney, petitioner appeared before the board without counsel. The charges were read, petitioner was asked if he were guilty of the charges, and he said no. The two brothers then began shouting at each other and petitioner left. No decision was ever rendered on the charges. Pet. App. A-4.

Petitioner alleges that, after his opposition to the dues increase, respondents discriminated against him with respect

to job referrals, principally by manipulating the hiring hall referral system that Local 71 operates. Under the referral procedures, each member is supposed to be registered in the highest priority group in the classification for which he qualifies, and, within each group, members are supposed to be referred to work in the order in which they signed the out of work list. Petitioner fulfilled the requirements of the highest priority group for journeymen linemen, known as Group I, who are supposed to be referred before any Group II members. Group II members are to be referred before any Group III members, and so on. Pet. App. A-4 to A-5.

Respondents repeatedly referred members who were qualified only for a lower priority group, or who were not ahead of petitioner on the out of work list, to employers for employment before petitioner. JA 10. Petitioner contends that the reason for this lack of referrals was his outspoken opposition to the dues increase. After the complaint was filed in this case, petitioner received some referrals, although they were for much lower paying jobs, with far less desirable working conditions, than the referrals received by those who did not oppose the dues increase. Pet. App. A-5. Local 71 made no efforts to refer petitioner to another job until January 19, 1987, well after this action had been filed. By that time, he had already committed himself to a job in New Jersey that he had obtained himself. Pet. App. A-6.

B. Proceedings Below.

Petitioner filed this action in the United States District Court for the Northern District of Ohio on July 25, 1986. He alleged that he had engaged in internal union political activities protected by the Bill of Rights of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411, and that he had suffered retaliation because of this activity. JA 11-12. He also claimed that respondents' conduct violated

the IBEW Constitution, including the requirements for substantive and procedural protections to be afforded to members against whom internal union charges have been filed, JA 36-37, and the requirement that local unions adhere to the terms of their collective bargaining agreements with employers. JA 24. *See also* JA 33 (Constitution forbids member or officer to "wrong[] a member of the IBEW by any act or acts . . . causing him physical or economic harm"). According to petitioner, the constitution is a contract between labor organizations under either section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, or state law, JA 12, 13, and he was entitled to sue for breach of that contract. He also contended that respondents had intentionally interfered with his contractual relations in violation of state law. JA 14. Petitioner sought injunctive relief, lost wages, lost fringe benefits, compensatory damages, punitive damages, and reasonable attorneys fees, and he demanded a jury trial. JA 16.[1]

In piecemeal fashion, the district court dismantled petitioner's case. First, on March 21, 1988, the district court dismissed the section 301 breach of contract claims. Pet. App. A-33 to A-36. Second, on August 29, 1988, in an in-chambers decision, it denied petitioner the right to a jury trial on his LMRDA claims. Pet. App. A-39 to A-40. Third, on October 19, 1988, the court dismissed petitioner's LMRDA free speech claims. Pet. App. A-58 to A-62.

The court of appeals affirmed in part and reversed in part in an unpublished opinion. It reversed the district court's dismissal of petitioner's LMRDA free speech claim, which was based on the deprivation of work in retaliation for his outspoken opposition to the dues increase. In all other

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[1] Petitioner also alleged discipline without due process and a breach of the duty of fair representation. The dismissal of those claims is not pursued here.

respects, however, the court affirmed the district court. First, it determined that petitioner enjoyed no right to a jury trial on his retaliation claim. It relied exclusively upon its prior decision in *McCraw v. Plumbers*, 341 F.2d 705, 709 (6th Cir. 1985), without acknowledging either that every other court of appeals that had addressed the question had reached a contrary conclusion, and despite the fact that an intervening Sixth Circuit decision had questioned the viability of *McCraw* in light of subsequent developments in this Court's Seventh Amendment analysis. Pet. App. A-20.

Second, the court held that petitioner could not enforce his claims based on Local 71's violations of the union constitution, under either state or federal law. The court first held that section 301 does not create a federal cause of action permitting individual union members to sue to enforce the constitution. The court acknowledged that *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981), had held that a union constitution is a contract between labor organizations and that section 301 creates a federal cause of action permitting one labor organization to sue another labor organization under the constitution. However, the court chose to adhere to its prior decision in *Trail v. Teamsters*, 542 F.2d 961 (6th Cir. 1976), that, even if a union constitution is a "contract between labor organizations," a suit brought by an individual member is not "a suit . . . between labor organizations" under section 301. The court distinguished *Plumbers* on the ground that there the suit had been brought by a labor organization, not an individual, and declined to consider anew the question reserved in *Plumbers*, whether such actions could be brought by individual members. Pet. App. A-11 to A-13.

At the same time, the court held that claims brought under union constitutions, although they do not arise under federal law, are subject to the dictates of federal law. The court then ruled that section 301 generally preempts claims under state law, so that state claims could not be brought to

enforce a union constitution. Pet. App. A-14 to A-15.

SUMMARY OF ARGUMENT

The fundamental flaw in the decision below is that the court mechanically applied its own precedents, without inquiring into whether subsequent developments in this Court's cases had undermined their validity.

1. With respect to the jury trial issue, the court below applied its own 1962 decision that followed the outmoded doctrine that newly created statutory rights are necessarily different from the forms of action that existed at common law at the time the Seventh Amendment was passed. This Court's more recent cases, however, look beyond the date on which the statutory right was created to determine whether the nature of the right and the nature of the remedy more closely resemble the kinds of cases that could be brought in the courts of law, in which case the parties are entitled to a trial by jury, or in the courts of equity, in which case a jury trial may be denied.

Here both the right and the remedy clearly support a jury trial. Only two Terms ago this Court determined, in the statute of limitations context, that free speech claims under the LMRDA most closely resemble personal injury actions. Such actions were brought at law, rather than equity, at the time the Seventh Amendment was adopted. Moreover, the principal relief sought here, compensatory and punitive damages, is legal rather than equitable. Finally, in passing the LMRDA, Congress chose to frame the right of action in a way that it believed would preserve the right to a jury trial, a fact which further supports the characterization of the action as legal rather than equitable.

2. The proposition that union constitutions are contracts that may be enforced in court is deeply embedded in the decisions both of this Court and of the state courts. Similarly

embedded is the proposition that individual union members may sue and be sued for breach of contract when the union constitution has been violated. The question presented here is whether such a suit may be brought under federal law pursuant to section 301.

Many of this Court's earlier decisions assumed that a suit between a member and a union is one that arises under state rather than federal law. But in 1981, this Court held that a union constitution is a "contract between labor organizations" within the meaning of section 301 of the LMRA, and that consequently one union body may sue another for breach of the constitution. In addition, the Court has long held, in the context of suits for breach of a contract between an employer and a union, that individual employees have standing to sue under section 301.

The apparent conflict between the older decisions treating suits on constitutions as based on state law, and the more recent decisions under which the union constitution is a federal law contract, is best resolved by allowing individual employees to sue under federal law. It would be intolerable for all concerned if the meaning, enforcement procedures, and remedies for violations of a union constitution depended on whether the plaintiff was an individual or a union entity. Moreover, suits seeking to enforce union constitutions typically involve issues of labor law and labor relations that peculiarly call for the application of uniform law. Finally, as in this case, suits by individual members under a union constitution commonly arise in tandem with a suit for violation of a substantive federal statute, including not only the LMRDA, but the duty of fair representation and other claims. It is far more efficient for all such claims to be brought in a single proceeding in federal court, in which all related claims can be heard together, rather than to require the contract claim to be resolved in state court if the federal statutory claim does not survive until trial.

ARGUMENT

I. A UNION MEMBER WHO SUES HIS UNION AND ITS OFFICERS FOR MONEY DAMAGES FOR VIOLATING HIS FREE SPEECH RIGHTS UNDER TITLE I OF THE LMRDA IS ENTITLED TO A TRIAL BY JURY.

In denying petitioner a jury trial on his claim for employment-related retaliation under section 101(a)(2) of the LMRDA, the lower courts relied exclusively upon *McCraw v. Plumbers*, 341 F.2d 705, 709 (6th Cir. 1965). Indeed, the court of appeals affirmed, seeing "no reason to disturb *McCraw*." Pet. App. A-20. *McCraw*, in turn, based its denial of a jury trial on two grounds. First, it held that the Seventh Amendment "has no application to cases where recovery of money damages is incident to an action seeking equitable relief," *i.e.*, reinstatement to union membership. *Id.* at 709. Second, it held that the LMRDA proceeding was statutory and, therefore, "unknown to the common law." *Ibid.*

This Court's precedents, however, have moved well beyond the outmoded analysis used by the court below. The mere fact that a cause of action was created by Congress, and thus did not exist in 1791, no longer disqualifies the action from trial by jury. *Tull v. United States*, 481 U.S. 412, 417 (1987). Rather, the Court now employs a two-part test to determine whether the Seventh Amendment guarantees the right to a jury trial. *See Tull, supra*, 418 U.S. at 417-418, and *Granfinanciera, S.A. v. Nordberg*, 109 S. Ct. 2782, 2790 (1989). As the Court explained in *Teamsters Local 391 v. Terry*, 110 S. Ct. 1339, 1345 (1990) (citations omitted),

> To determine whether a particular action will resolve legal rights, we examine both the nature of the issues involved and the remedy sought. "First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature. The second inquiry is the more important in our analysis."

The Court also emphasized that "any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *id., citing Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 501 (1959), and *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935). The three Justices who dissented agreed with both parts of this analysis, but would have combined them in a slightly different way.[2]

The outcome of this case, however, does not turn on a choice between these two modes of analysis. Whether treated separately or as part of a unitary analysis, both of the factors on which the Court seems to be unanimous argue strongly in favor of recognizing the right to a jury trial in free speech cases under the LMRDA, at least where damages is the principal form of relief sought, as is true here. And, indeed, every court of appeals that has considered the issue, other than the Sixth Circuit, recognizes the right to a jury trial in LMRDA cases. *Quinn v. DiGiulian*, 739 F.2d 637, 645-46

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[2] Thus, rather than treating the nature of the remedy sought as a separate test in addition to comparisons with 18th century actions, the dissenters regard the remedy as one factor to be considered in the comparison process. 110 S. Ct. at 1358. Under this analysis, the dissenters, unlike the majority, did not treat the remedy as more important than the nature of the action. Justice Brennan's concurring opinion argued that the time has come to dispense with the first prong of the historical inquiry altogether. He would decide Seventh Amendment questions solely on the basis of the relief sought, comparing it to the nature of the relief available at law or at equity in 18th century England.

(D.C. Cir. 1984); *Simmons v. Textile Workers Local 713*, 350 F.2d 1012, 1018 (4th Cir. 1985); *Boilermakers v. Braswell*, 388 F.2d 193, 197-198 (5th Cir. 1968). *See also Feltington v. Motion Picture Operators Local 306*, 605 F.2d 1251, 1257 (2d Cir. 1979).

Turning first to the most analogous cause of action, it is useful to draw on this Court's treatment of analogous state law claims for statute of limitations purposes, as at least five members of the Court did in *Teamsters Local 391 v. Terry, supra*. The plurality that joined Part III-A of the *Terry* opinion began by addressing the union's argument that the claim most closely analogous to a duty of fair representation ("DFR") claim was an action to vacate an arbitration; for that proposition, the union had relied on this Court's statute of limitations decision in *UPS v. Mitchell*, 451 U.S. 56 (1981). Although the plurality ultimately rejected the analogy on the ground that there had been no arbitration in *Terry*, 110 S. Ct. 1345-1346, and did not hold that the Seventh Amendment inquiry is the *same* as the limitations inquiry, the plurality plainly looked to this Court's limitations decisions, including not only *Mitchell* but also *DelCostello v. Teamsters*, 462 U.S. 151 (1983), in deciding how best to characterize the DFR claim in *Terry*. *See also* 110 S. Ct. at 1346, 1347 n.7. Similarly, Justice Stevens, who did not join Part III-A, relied heavily on his previous opinion in *Mitchell*, stating that a DFR claim is most closely analogous to an attorney malpractice action for statute of limitations purposes, in deciding how best to characterize the claim for Seventh Amendment purposes. *Id.* at 1353-1354. [3]

This Court has recently had occasion to address the proper limitations period for LMRDA actions like this one.

[3] Neither the dissenters nor Justice Brennan, who would have ignored the "nature of the right" aspect of the inquiry, made any mention of the limitations cases.

In *Reed v. UTU*, 488 U.S. 319 (1989), a union official had sued for denial of reimbursements for "time lost" while carrying out his union duties, claiming that these replacement wages had been denied in retaliation for his exercise of his free speech rights in criticizing the local's president. This Court had no difficulty rejecting the union's claim that the limitations period should be the same as in DFR actions, where the Court has borrowed the six-month limitations period in section 10(b) of the National Labor Relations Act, and decided instead that the most analogous claim is one for personal injuries. *Id.* at 326-327. Therefore, applying the analogy used for limitations purposes to the Seventh Amendment inquiry, and because personal injury actions are one of the prototypical kinds of actions to which the Seventh Amendment applies, James, *Right to a Jury Trial in Civil Actions*, 72 Yale L.J. 655, 668 (1963), the right to a jury trial is available here.[4]

Even apart from the statute of limitations analogy, this Court has held that, where a federal "statute merely defines a new duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach," the action "sounds basically in tort," and the right to a jury trial is protected by the Seventh Amendment. *Curtis v. Loether*, 415 U.S. 189, 195 (1974). Similarly, here, in the Union Member's Bill of Rights, Congress defined a new duty

[4] There were ten principal common law actions including trespass on the case (commonly referred to simply as "case"). Trespass on the case was an action to recover damages for wrongful acts not within the scope of other actions (and not breaches of contract) which cause injury without direct physical interference with person or property. Examples of such actions include libel, slander, nuisance and deceit. Pound, Readings on the History and System of the Common Law 349-350 (1921) (quoting Maitland, Lectures on the Forms of Action at Common Law). The action for Trespass on the Case is most analogous to the modern day personal injury tort action.

for unions vis-a-vis their members, and this action for damages also "sounds basically in tort." Consequently, the Seventh Amendment guarantees petitioner the right to a jury trial.

Turning to the nature of the relief sought in this case (as authorized by the LMRDA), petitioner's principal claim is for compensatory and punitive damages. His contention is that, because he expressed his views, respondents retaliated against him by denying him job referrals and referring him to undesirable positions. Petitioner seeks money damages to compensate him both for these lost wages and benefits, for the emotional distress that was caused by the denial of his livelihood, and for the damage to his reputation, JA 10, as well as punitive damages. JA 15. Because monetary relief was "the traditional form of relief available in the courts of law," *Curtis v. Loether*, 415 U.S. at 196, the compensatory and punitive damages sought here are plainly legal, rather than equitable.

This Court has made clear that at least some of the damages sought in this case are available under the LMRDA. In *Boilermakers v. Hardeman*, 401 U.S. 233 (1971), the question was whether the National Labor Relations Act preempted a Title I claim because the plaintiff was seeking damages for loss of employment caused by the union's Title I violation, rather than an injunction. This Court rejected the preemption claim, because Congress had contemplated that damages would be a proper form of relief under section 102, *id.* at 239-240, and where "Congress has said that he is entitled to damages for the consequences of" the Title I violation, a union member's claim for such damages can scarcely be said to be preempted. *Id.* at 241. Moreover, the types of damages sought here, in addition to lost wages and benefits, are all available in appropriate Title I actions. Although the questions remain open in this Court, the circuits are unanimous in

allowing damages for emotional distress[5] and punitive damages.[6]

The fact that petitioner seeks injunctive relief, in addition to his damages claims, does not deprive him of his Seventh Amendment right to a jury trial. When both equitable and legal relief are sought, the Seventh Amendment guarantees the right to a jury trial unless the legal relief sought is merely incidental to claims for equitable relief that predominate. *Tull, supra*, 481 U.S. at 424-425. In *McCraw*, for example, the Sixth Circuit denied a jury trial because it treated the claim there as being primarily directed at obtaining an injunction compelling reinstatement to membership, with damages being merely incidental and, according to that

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[5] *Guidry v. Operating Engineers Local 406*, 882 F.2d 929, 943-944 (5th Cir. 1989); *Rodonich v. Laborers Local 95*, 817 F.2d 967, 977-978 (2d Cir. 1987); *Murphy v. Operating Engineers Local 18*, 774 F.2d 114, 126 (6th Cir. 1985); *Bise v. IBEW Local 1969*, 618 F.2d 1299, 1305 (9th Cir. 1979); *Simmons v. Textile Workers Local 713*, 350 F.2d 1012, 1020 (4th Cir. 1965). Damages may also be awarded for injury to reputation. *Rosario v. ILGWU Local 10*, 605 F.2d 1228, 1245 (2d Cir. 1979); *Simmons v. Textile Workers*, *supra*, 350 F.2d at 1020.

[6] *Guidry v.Operating Engineers Local 406*, 882 F.2d 929, 942-943 (5th Cir. 1989); *Quinn v. DiGiulian*, 739 F.2d 637 (D.C. Cir. 1984); *Parker v. Steelworkers Local 1466*, 642 F.2d 104, 107 (5th Cir. 1981); *Bise v. IBEW Local 1969*, 618 F.2d 1299, 1305 n.6 (9th Cir. 1979); *Schmid v. Carpenters*, 827 F.2d 384, 386 (8th Cir. 1987). *See also Petramale v. Laborers Local 17*, 847 F.2d 1009, 1013-1014 (2d Cir. 1988). The Sixth Circuit has characterized its own decision in *McCraw* as one that appears to forbid punitive damages, while at the same time questioning whether that prohibition remains good law. *Shimman v. Frank*, 625 F.2d 80, 101 (6th Cir. 1980). In fact, *McCraw* does not even address the issue of punitive damages. This Court treated the issue of punitive damages under the LMRDA as an open question in *IBEW v. Foust*, 442 U.S. 42, 47 n.9 (1979).

court, unavailable on the facts of that case. 341 F.2d at 709-710.

In this case, however, the principal form of relief sought is monetary damages, and it is the injunctive relief (restoring him to Group I and barring future hiring hall discrimination, JA 14) that is incidental to the damages, rather than the other way around. Indeed, as this Court has previously noted, "§ 102 contemplates that damages will be the usual, and injunctions the extraordinary form of relief" in Title I cases. *Boilermakers v. Hardeman*, 401 U.S. at 240. Accordingly, jury trials should be the rule, rather than the exception, in cases such as this.

Nor does the fact that some of the damages sought here are for lost wages make the claim equitable rather than legal. Some cases, especially in the Title VII context, have treated back pay as a restitutionary incident to an order reinstating the plaintiff to a job from which he has been terminated. Here, however, the union cannot reinstate petitioner to any job to which it failed to refer him, and the money sought is damages from the union to compensate petitioner for the loss of income from the employers to whose jobs he was not referred, rather than restitution of wages which the union itself should have paid him. The economic relief here is virtually equivalent to the damages sought from the union in *Teamsters Local 391 v. Terry*, *supra*, which were held to be legal and which thus entitled Terry to a jury trial. 110 S. Ct. at 1348-1349.

There is a final consideration which supports a conclusion that the nature of this action is legal: the care taken by Congress to ensure the right to a jury trial in Title I cases. As originally proposed on the Senate floor, as part of the "McClellan Amendment" to the bill reported by the Senate Committee on Labor and Public Welfare, section 102 (then numbered section 103) would have been enforced by the Secretary of Labor, and restraining orders would have been

a key feature of the relief available. The principal objection to this part of the McClellan Amendment was that such an enforcement scheme would deprive both the unions and their members of the right to trial by jury. 2 NLRB, *Legislative History of the LMRDA* 1111-1114 (1959). The McClellan Amendment narrowly passed by a vote of 47-46, but three days later the Senate adopted a substitute amendment, authored by Senator Kuchel, by an overwhelming margin. "One of the major changes in the proposal," *id.* at 1232, was in section 103. As Senator Kuchel explained, *id.* at 1230,

> our amendment provides for deleting from the McClellan amendment the provision for the right of the Secretary of Labor to seek an injunction when any of the rights enumerated are alleged to have been violated. In such circumstances, our amendment gives to a union member who alleges such a grievance the right to go into the Federal court for appropriate relief.

Although the jury trial issue was not mentioned at this time as the reason for the change, it is fair to infer from the nature of the objections mounted against the McClellan Amendment that the reason for the change was that the Senate wanted to deemphasize both injunctions as a form of relief, and the Secretary of Labor as the enforcement agent, in order to ensure that the right to a jury trial would be retained.

This legislative history is relevant here in two ways. First, although Congress cannot defeat the right to a jury trial by labeling relief as equitable rather than legal, the fact that Congress was trying to create an enforcement scheme that preserved the right to a jury trial is surely relevant in deciding whether the rights and remedies in this case are legal rather than equitable. Second, although the first Question Presented in the petition is based on the Seventh Amendment,

the Court can avoid reaching that constitutional question if it decides that there is a statutory right to a jury trial. *See Teamsters Local 391 v. Terry*, 110 S. Ct. 1339, 1344 n.3 (1990) (looking first to statute to see whether Seventh Amendment question could be avoided); *Boynton v. Virginia*, 364 U.S. 454, 457 (1960) (resolving statutory issue not presented by petition in order to avoid constitutional question); *Fry v. United States*, 421 U.S. 542, 545 n.5 (1975) (same).

The Bill of Rights of Union Members was modeled after the Bill of Rights of the United States Constitution, and it was intended to democratize labor unions. One of the basic rights that makes the American system of justice more democratic than virtually any in the world is the right to a jury trial, guaranteed by the Seventh Amendment. It would be more than ironic, particularly in the bicentennial year of our Constitution's Bill of Rights, were the Court to hold that union members who bring suit under their statutory Bill of Rights are not entitled to a trial by jury under our nation's Bill of Rights. Both the rights asserted and the remedies sought here are legal rather than equitable, and petitioner should therefore be allowed a jury trial on his Title I claim.

II. A UNION MEMBER MAY SUE TO ENFORCE HIS UNION'S CONSTITUTION UNDER SECTION 301.

As Justice Frankfurter has written, the proposition that a union constitution is a contract, and that violations of the constitution may be remedied by a suit for breach of contract, "widely prevails in this country," *Machinists v. Gonzalez*, 356 U.S. 617, 618 (1958), and is deeply embedded in this Court's precedents. Similarly embedded is the proposition that individuals may sue over a breach of that contract. Suits for breach of contract based on the union constitution have been permitted in such disparate circumstances as where the member contends that the union has imposed discipline in a manner

not permitted by the constitution, *id.*, where the union seeks to collect a fine that has been imposed for the member's violation of the constitution, *NLRB v. Boeing Co.*, 412 U.S. 67, 75-76 (1972), where a subordinate union entity seeks to prevent a national union from merging it into another subordinate entity, *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981), and where a national union seeks to enforce financial or trusteeship provisions against a rebellious subordinate. *E.g.*, *Letter Carriers v. Sombrotto*, 449 F.2d 915, 918 (2d Cir. 1971).

The question in this case is whether federal law, specifically section 301 of the Labor-Management Relations Act, creates a cause of action when the individual union member sues for breach of that contract. This question has never been squarely presented to this Court, although there have been a number of earlier cases in which the Court has assumed that the proper forum for enforcement of the contract by or against an individual member would be a state court. *E.g.*, *Gonzalez* and *Boeing*, *supra*. *See also Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971) (suit brought under state law but National Labor Relations Act held to preempt that claim). However, in 1981, in *Plumbers*, *supra*, the Court decided that federal law governs when a subordinate union sues its parent international. Accordingly, the question here is whether *Plumbers*' holding or the dictum in the earlier cases should control and thus whether state rather than federal law should govern when it is the individual member who brings the suit.

In order to explain why the same law should govern both when a suit is between union entities and when the case is between a union body and individuals, we begin by reviewing the Court's reasoning in *Plumbers*, and then show why that same reasoning applies here. We then explain that the language of the statute admits of no distinctions between suits between unions and suits between unions and their members,

and conclude by describing the host of practical problems that would be caused by holding that intra-union suits may only be brought under state law.

In *Plumbers*, a local union sued in state court to prevent its parent international from splitting its members into two groups (plumbers and pipefitters), and merging those two groups into two separate locals (one a plumbers local, one a pipefitters local) comprised of the members of eight other pre-existing locals. The local contended that the union constitution forbade division of a local's membership into separate work classifications, and that the international had abused its discretion in ordering the consolidation. It sought injunctive relief both to protect its charter as an autonomous local union and to prevent its members from suffering the intra-union discipline of expulsion. The international removed the case to federal court on the ground that the claim arose under section 301, and this Court upheld both the jurisdictional claim and the conclusion that federal law governed the claim.

The Court first noted that there was virtually no legislative history concerning the question whether a union constitution is a "contract between labor organizations" within section 301, but that the statutory term was plainly broad enough to include union constitutions. 452 U.S. at 619-620. Moreover, the Court took note of the many cases, including those like *Gonzalez* involving suits by individuals against the union, that treated union constitutions as contracts. *Id.* at 621-622. The Court rejected the contention that federal jurisdiction would be available, and federal law would apply, only when there was a specific assertion that the particular dispute could have a significant impact on stability in labor-management relations, for two reasons. First, although the overall purpose of the LMRA was to promote industrial peace, Congress could well have concluded that promoting union responsibility, by forcing unions to live up to all of their

promises, including their agreements among themselves, would promote labor peace. Second, the words used by Congress were broad, and not limited by a case-by-case requirement of impact on labor peace:

> Since union constitutions were probably the most commonplace form of contracts between labor organizations when the Taft-Hartley Act was enacted (and probably still are today), and Congress was obviously familiar with their existence and importance, we cannot believe that Congress would have used the unqualified term "contract" without intending to encompass that category of contracts represented by union constitutions. Nothing in the language and legislative history of § 301(a) suggests any special qualification or limitation on its reach, and we decline to interpose one ourselves.
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> *Id.* at 624-625.

This reasoning is fully applicable to suits by individual members against their unions, because the constitution is as much a contract between labor organizations when the member sues as when a local sues, and because the statute no more imposes a requirement that an impact on labor relations be shown when the plaintiff is a member than it does where a union is the plaintiff. Accordingly, although the Court expressly reserved the question of whether individual members could sue under section 301 to enforce the union constitution, *id.* at 627 n.16, every circuit that has addressed the question in a published decision since *Plumbers* has held that individual members as well as unions may sue under section 301. *DeSantiago v. Laborers Local 1140*, 914 F.2d 125, 127-128 (8th Cir. 1990); *Pruitt v. Carpenters Local 225*, 893 F.2d 1216, 1218-19 (11th Cir. 1990); *Lewis v. Teamsters Local 771*, 826

F.2d 1310, 1312-1314 (3d Cir. 1987); *Kinney v. IBEW*, 669 F.2d 1222, 1229 (9th Cir. 1981); *see also Abrams v. Carrier Corp.*, 434 F.2d 1234, 1247-1248 (2d Cir. 1970).

There are several reasons why the decision below cannot be reconciled with this Court's decisions under section 301 and, in particular, with the analysis of *Plumbers*. First, this Court has long recognized that an individual union member can enforce his rights under section 301 contracts other than the union constitution. *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). *See also Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 25, n. 28 (1983) (Court has "not taken a restrictive view of who may sue under section 301 for violations of such contracts"). In *Smith*, the question was whether an individual could sue to enforce those aspects of a collective bargaining agreement that protected his individual terms and conditions of employment. It was argued that section 301 was only concerned with the parts of a collective bargaining agreement that concerned the rights of the union as an institution and the rights of employers. That argument was rejected because the rights of individuals are a major focus of collective bargaining agreements and there is no basis in the statute for excluding claims about such rights from the ambit of section 301. 371 U.S. at 200. So in the case of a union constitution, many of its most important provisions concern the rights and responsibilities of individual union members, and section 301 does not distinguish between the parts of union constitutions that may be enforced under federal law and those whose enforcement should be left to the vagaries of state law.

The Court also rejected the claim in *Smith* that only the union itself could sue to enforce the individual rights in a collective bargaining agreement. The employer had argued that the word "between" in section 301 referred to "suits" rather than "contracts", and that section 301 only allowed suits between unions and employers. This Court rejected that

argument as well, holding that section 301 governs suits, by and against whomever, to enforce any contracts that are within its ambit. *Id.* at 200-201. So, here, a suit brought by an individual to enforce a contract between labor organizations, known as a union constitution, should be governed by section 301 no matter who brings or defends it. There is no reason on the face of the statute or under the principles of federal labor law why an individual union member should be permitted to sue to enforce an agreement between a labor organization and an employer, but not an agreement between two labor organizations of which he is a member. Thus, read together, *Smith* and *Plumbers* strongly suggest that a union member's suit alleging violations of a union constitution is actionable under section 301.

As this Court has observed, in cases involving union constitutions, "the substantive law to be applied 'is the federal law, which the courts must fashion from the policy of our national labor laws.'" *Plumbers, supra*, 452 U.S. at 627, citing *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957). That principle fully applies here. Indeed, a contrary conclusion could create a variety of practical problems for the administration of union constitutions. Such constitutions determine the way in which national unions will be governed, the manner of ratification of collective bargaining agreements, and the rights and responsibilities of members when unions are involved in collective bargaining with or economic warfare against employers. Constitutions also cover the manner in which unions will handle their responsibilities with respect to referrals to employment through hiring halls, and a host of other issues closely tied to labor relations matters with respect to which federal law has normally been paramount. If the enforcement of a union constitution were governed by state rather than federal law, then both its meaning and the remedies for its violation would also be governed by state law, and could be different in each of the

fifty states.

For example, if there were a dispute about whether a collective bargaining agreement had been properly ratified, the ratification might be deemed proper in Pennsylvania but not in New Jersey. Or if the question were whether the constitution allows discipline of members who refuse to perform picket duty, a union whose striking members lived in Connecticut and New York might be subjected to widely varying requirements and might have widely varying remedies for violations of their constitutional rights, making it difficult for either the union or the employer to predict the impact of their economic weapons and thus to settle a bargaining dispute in light of its likely outcome. Or if the dispute were over the relative powers of the members of a union's executive board, the validity of a wide range of union decisions could depend on whether suit were brought by executive board members who lived in Missouri or those who lived across the river in Illinois.

For these reasons, as in the case of suits to enforce collective bargaining agreements, suits seeking to enforce union constitutions involve issues of labor law and labor relations that "peculiarly call[] for uniform law." *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962). It would certainly seem desirable from a policy perspective to have adjudications involving such issues made uniformly under federal law rather than haphazardly under state law in the courts of all fifty states. *See generally Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985). "To exclude these claims from the ambit of § 301 would stultify the congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law." *Smith v. Evening News Ass'n*, 371 U.S. at 200. The need for such uniformity is consistent with long established principles in the area of labor relations law.[7]

Moreover, in light of this Court's holding in *Plumbers* that union constitutions are enforceable under section 301 when a union is a plaintiff, the effect of holding that they are not enforceable under section 301 when an individual member is a plaintiff will be that the applicability of federal law principles will depend on the identity of the party who files the claim (or, perhaps, who files first). The inevitable result of this holding will be that the same clause of the same constitution may be given different meanings, depending on the identity of the plaintiff in a particular case, and the remedies for the same violation of any given provision may also differ, depending on who happens to be the plaintiff. Consequently, those who seek to enforce a union constitution could shop for the most favorable forum by choosing the plaintiffs in whose name contract enforcement is sought, thus enabling the action to be brought under state law or under federal law. The possibility of differing meanings and remedies, based on the identity of the plaintiff and, thus, the choice of law, would create an intolerable uncertainty about the meaning and effect of union constitutions that would surely undermine stable labor relations.

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[7] A holding that section 301 creates a federal cause of action to enforce union constitutions does not necessarily mean that all section 301 enforcement principles pertaining to collective bargaining agreements necessarily apply to constitutions. For example, the doctrine of "complete preemption," whereby the preemptive effect of section 301 is so strong as to make state claims to enforce a collective bargaining agreement removable to federal court, *Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 23-24 (1983), may not apply to union constitutions. These questions are not presented here, however. Similarly, and as in *Plumbers*, the Court need not decide whether, or to what extent, the source of the federal law to be applied will be the law of the several states. *See Plumbers*, 452 U.S. at 627.

For example, in *Plumbers*, one of the claims advanced by Local 334 on behalf of its members was that they were being disciplined in a manner forbidden by the union constitution. If the holding below is correct, the individual members might have decided that the federal law that is to be applied under section 301, with respect to either the construction of contracts or the remedies available for breach, was less advantageous than the law of the state in which some of those members lived. They could have brought their own claims under state law, and, indeed, different members of the same local might succeed or fail in their claims that they were disciplined improperly. And, even more troubling, an order consolidating nine locals could have been held to have improper disciplinary impact on the members of some locals, but not others, thus wreaking havoc with the international's ability to predict its success in carrying out the consolidation that it deemed necessary to further the bargaining aims of plumbers and pipefitters in the construction industry in a particular region of the country.

This problem is, of course, not unique to unions. Many national institutions have contractual and other relationships with persons throughout the country, and might be said to benefit from the advantages of a single body of federal law to govern their relationships. Yet corporations, for example, are not entitled to uniformity in the construction of franchise or supply agreements; nor are unions or employers entitled to have state statutory or common law causes of action relating to working conditions treated as claims under section 301, unless those claims depend on a collective bargaining agreement. *Lingle v. Norge*, 486 U.S. 399 (1988); *cf. Steelworkers v. Rawson*, 110 S. Ct. 1904 (1990). However, where Congress has directed that suits over contracts between labor organizations are to be governed by section 301, there is no reason to avoid treating union constitutions as section 301 contracts, simply because it is a member rather than a union

entity that is bringing the action.

A further problem arises because questions of union constitutional interpretation are often intertwined with the enforcement of federal labor statutes. In the LMRDA alone, for example, union constitutional issues are implicated in making decisions under four of the five substantive titles. In Title I, sections 101(a)(1) and 101(a)(2) both subject the rights they create -- the equal right to vote and the right of free speech -- to "reasonable rules" in the union's constitution and bylaws; certain dues claims under section 101(a)(3)(B) turn on the presence of authority in the union constitution. In Title III, trusteeships may only be imposed in accordance with the union's constitution, section 302, and the presumption of validity of a trusteeship depends on whether it has been imposed consistent with the requirements of the union's constitution. Section 304(c). In Title IV, unions are required to comply with their own constitutions regarding elections, sections 401(e) and (f), and a variety of rights, such as the right of every member in good standing to run for office, section 401(e), are made subject to restrictions in the union's constitution if those restrictions are reasonable. And the fiduciary obligation codified by Title V requires, in part, that a union's funds be expended in accordance with its constitution. Section 501(a).

In enforcing all of these provisions in cases involving the claims of individual union members, the courts have often assumed that the meaning of the union's constitution is a question of federal law. *E.g.*, *Monzillo v. Biller*, 735 F.2d 1456, 1458 (D.C. Cir. 1984) (Title V); *Vestal v. Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971) (Title III). Indeed, because the constitution is so intertwined with the substantive question, it is not uncommon for the LMRDA claim to be accompanied by a claim for breach of the union constitution. But if state law were to govern the meaning of the constitution in such cases, the application of all of these Titles might vary from state to

state, a result that would scarcely serve either the interest in stable labor relations, or the interest in giving the rights and responsibilities created by these titles a uniform application throughout the country.[8]

Additionally, a holding that constitutional claims that are intertwined with such federal statutory claims arise solely under state law would lead to less efficient resolution of the dispute between the parties. Frequently, a court will decide before trial that the federal statutory claim fails, and yet under *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966), the presumption is that when the federal claim is dismissed before trial, any pendent state law claims should be dismissed (or remanded to state court, if the case was removed to federal court). Given the frequency with which constitutional claims are brought in tandem with statutory ones, it would be more efficient if all such claims could be resolved in the same forum.

In summary, the decisions of the lower courts in this case are incorrect. *Plumbers* and *Smith*, when read together, particularly in the context of the practical problems that would be created by the Sixth Circuit's rule, dictate that a union member be allowed to sue his union in federal court under the principles of federal law under section 301 for violations of the union constitution.

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[8] Admittedly, the question presented, as redrafted by this Court, concerns only whether there is a federal cause of action under section 301. But it hardly seems likely that union constitutions could be governed by state law when suit is brought by a member without reference to any statutory right, but by federal law when the constitutional question arises in the context of a member's LMRDA claim.

CONCLUSION

The judgment of the court of appeals denying the right to jury trial and affirming the dismissal of the claim on the union constitution should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted,

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April 22, 1991

QUESTIONS PRESENTED

1. Is a union member, who sues his union and its officers for money damages for violations of his free speech rights under Title I of the Labor-Management Reporting and Disclosure Act, entitled to a trial by jury under the Seventh Amendment?

2. Does section 301 of the Labor-Management Relations Act create a federal cause of action under which a union member may sue his union for a violation of the union constitution?

PARTIES TO THE PROCEEDING

In addition to the parties listed in the caption, the parties to this proceeding are respondents R.L. "Buck" Wooddell and Gregory Sickles.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-967

GUY WOODDELL, JR.,
Petitioner,
v.
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Sixth Circuit is reproduced at pages A-1 to A-21 of the Appendix to the Petition for Writ of Certiorari ("Pet. App. A-1 to A-21"). The unreported opinions of the United States District Court for the Southern District of Ohio are reproduced at Pet. App. A-24 to A-36, A-37 to A-41, and A-42 to A-63.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion on June 27, 1990. That court denied a timely petition for rehearing on September 4, 1990. Pet. App. A-22.

This Court has jurisdiction under 28 U.S.C. § 1254(1). Certiorari was granted on February 19, 1991.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution provides:

Trial by jury in civil cases

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, provides, in relevant part:

Suits by and against labor organizations

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 101(a)(2) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(2), provides:

> Freedom of speech and assembly.
>
> Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

Section 102 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 412, provides, in relevant part:

> Civil action for infringement of rights; jurisdiction. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.

STATEMENT

A. Facts.

Petitioner, Guy Wooddell, Jr., is the brother of respondent R.L. "Buck" Wooddell. Joint Appendix ("JA") 7. Respondent Gregory Sickles is the son-in-law of respondent Wooddell. Pet. App. A-2. Petitioner Wooddell is a member of respondent International Brotherhood of Electrical Workers, Local Union No. 71 ("Local 71"). JA 7. His brother Buck, in the period relevant to this lawsuit, was the president of Local 71. Respondent Sickles has been the Business Manager of Local 71 since October, 1985. JA 7.

The trouble between the relatives, insofar as it is alleged by the petitioner, began in January, 1986 when petitioner Wooddell opposed a union dues increase. In prior years, petitioner Wooddell claims to have opposed the selection of various Local 71 officers, including the selection of respondent Sickles as the Local 71 Business Manager. A telephone call took place between the brothers in which respondent Buck Wooddell recalls his brother Guy accusing him of bribing an employer, and telling respondent that there would be an attorney "living in my

[Buck's] house one of these days." Petitioner alleges that his brother Buck told him that if he persisted in making false accusations against him and Local 71, he would be "finished" in the union, Pet. App. A-2, A-3.

Shortly after this telephone conversation, respondent Buck Wooddell filed what he considered informal charges against his brother Guy, seeking to have petitioner appear before the local's executive board in order to explain his disagreements with the local union. On February 24, 1986, the local sent petitioner a letter directing him to appear before the local executive board on March 14, 1986, and informing him that he could bring witnesses and a fellow union member to act as his counsel. Petitioner after consulting an attorney, appeared without counsel at the meeting. The charges were read, petitioner was asked if he was guilty of the charges, and petitioner said "no." The two brothers then began shouting at each other, and petitioner left. No actual decision was rendered on the charges although respondents agreed before trial that no action would be forthcoming. Pet. App. A-3, A-14.

Petitioner alleges that, following this incident, respondents discriminated against him with respect to job referrals. The referral system operated by priority groups, with Group I having the highest priority, Group II the next highest, etc. Each group had its own criteria for inclusion. In May of 1986, the local union re-classified petitioner from Group I to Group II on the basis that petitioner had not worked in the trade the requisite hours in the preceding three years to remain in Group I. Pet. App. A-4, A-5.

Between January and July, 1986, the local did not succeed in making any job referrals to petitioner. The local's records shows that it attempted to reach petitioner on July 25, 1986 and July 28, 1986 in order to make a referral. On July 29, 1986, a message was left with petitioner's wife, but petitioner did not return the call.

In August of 1986, petitioner accepted a job referral from the local, worked only two days, and quit, claiming that the job was unsafe. By this time, he had filed his lawsuit. Pet. App. A-5.

Petitioner was referred to yet another job by the local in October, 1986. Then, in February, 1987, when attempting to refer petitioner to another job, it was discovered that petitioner had accepted a different job in the state of New Jersey. Pet. App. A-5-6.

B. Proceedings Below.

Petitioner filed this action in the United States District Court for the Southern District of Ohio, Eastern Division, on July 25, 1986. He alleged that he had been retaliated against for engaging in internal political activity protected by the Bill of Rights of the Labor Management Reporting and Disclosure Act ("LMRDA" or "Landrum Griffin Act"), 29 U.S.C. § 411. He also claimed that the respondents violated the constitution of the International Brotherhood of Electrical Workers, asserting that this document is a contract under which he can sue pursuant to § 301 of the Labor Management Relations Act ("LMRA" or "Taft- Hartley Act"), 29 U.S.C. § 185, ("§ 301") or under state law.[1] He alleged that Local 71 breached its collective bargaining agreement in violation of the LMRA and state law, and that the union breached its duty of fair representation in violation of LMRA § 301. He also alleged that he was deprived of the right to a full and fair hearing under Title I of the LMRDA, and that respondents were guilty of intentional infliction of emotional distress. Pet. App. A-6, JA 16. It is the petitioner's claim that Local 71 breached its

[1] Petitioner has not sought review of the findings of the Sixth Circuit Court of Appeals that his union constitution claims under state law are preempted by federal labor law.

constitution in violation of § 301 that is now before the Court.

The respondents moved for summary judgment, and, in March 1988, the district court granted summary judgment on the § 301 breach of contract claim and to the individual respondents on the § 301 fair representation claims. The case was then scheduled for trial in August 1988. Pet. App. A-7.

In July 1988, the respondents again moved for summary judgment on the remaining claims; the trial, meanwhile, was continued. In October 1988, after the submission of additional authorities and a response by the petitioner, the court issued an order granting summary judgment to the respondents on the rest of the claims. Pet. App. A-7.

The Sixth Circuit Court of Appeals affirmed in part and reversed in part in an unpublished decision. It reversed the district court's dismissal of petitioner's claim that he was retaliated against because of his exercise of free speech under the LMRDA through the deprivation of work opportunities. In all other respects, including the denial of a jury trial, it affirmed the decision of the district court. Pet. App. A-20, A-21.

The court of appeals also rejected the petitioner's § 301 claim under the union constitution. It noted that the holding of the Court in *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981) was limited to suits brought under § 301 by one labor organization against another alleging violations of the union constitution. The court of appeals rejected an argument that the reasoning of *Plumbers* warranted a change in the prior holding in *Trail v. Teamsters*, 524 F.2d 961 (6th Cir. 1975). In *Trail*, the Sixth Circuit Court of Appeals held that a union member cannot sue his union under § 301 on a claim for an alleged

violation of the union constitution. The court of appeals declined to overrule *Trail*. Pet. App. A-11, to A-13.[2]

SUMMARY OF ARGUMENT

I. Respondents concede that under this Court's recent decision in *Teamsters Local 391 v. Terry*, —— U.S. ——, 58 L.W. 4345 (March 20, 1990), petitioner is entitled to a jury trial and that *Terry* requires that the court of appeals' contrary conclusion in this regard be reversed.

II. Section 301 of the LMRA does not explicitly provide for suits by individuals against their unions based upon a union constitution. Federal involvement in the interpretation of union constitutions did not come about until passage of the LMRDA in 1959.

There is a fundamental difference between a contract between two parties explicitly stated in a collective bargaining agreement, and contractual relationships implied by law whose terms, *inter alia*, may be gleaned from provisions of a union constitution. At the time of the passage of the LMRA, union constitutions were recognized as embodying terms of three separate contractual relationships: a contract of association among the members *inter se*, a contract between a member and his union, and a contract between a national union and its local unions. The Court has recognized the implicit nature of such contracts, and that aspects of a union constitution may constitute one or the other of these relationships. The lack of legislative history regarding the "between any

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[2] The Court of Appeals also found that the union constitution does not form a contract between the individual and his union. (Pet. App. A-15). While petitioner has not sought review of this determination, respondents concede that the conclusion of the court of appeals is inconsistent with the Court's holding in *Machinists v. Gonzales*, 356 U.S. 617 (1958). The court of appeals also held, however, that if such a contract were formed, the claims raised in this case would be preempted by federal labor law. Pet. App. A-15. Petitioner has not sought review of this determination.

such labor organizations" language of § 301, along with the LMRA's legislative history suggesting an intention not to interfere in the internal affairs of unions, demonstrates that Congress did not intend to create a federal cause of action for suits by union members on their contracts with their union. While Congress could have concluded that enforcement of the terms of union constitutions setting out the relationship between a parent union and its affiliated locals may contribute to industrial stability, no such broad conclusion could be reached regarding individual members suing on the union constitution. With passage of the LMRDA, Congress specified those areas of the contractual relationships between a member and his union which it wished to federalize. If an individual may sue the union as an entity on its constitution, there is no reason why he or she may not sue the union's officers or fellow members on the same basis, federalizing claims that do not even bear a remote relationship to the industrial stability that the Taft-Hartley Act was intended to promote.

ARGUMENT

I. RESPONDENTS CONCEDE THAT UNDER THIS COURT'S DECISION IN *TEAMSTERS LOCAL 391 v. TERRY* PETITIONER IS ENTITLED TO A JURY TRIAL AND THAT *TERRY* REQUIRES THAT THE COURT OF APPEALS' CONTRARY CONCLUSION IN THIS REGARD BE REVERSED

Petitioner contends that the decision of the court of appeals denying petitioner a jury trial on his LMRDA damage claims conflicts with this Court's recent decision in *Teamsters Local 391 v. Terry*, —— U.S. ——, 58 L.W. 4345 (March 20, 1990). *Terry* holds that under the Seventh Amendment a plaintiff in a duty of fair representation action against a union who is seeking money damages is entitled to a jury trial.

For the reasons that follow, respondents have come to the conclusion that *Terry* governs this case and that the

court of appeals' conclusion that petitioner is not entitled to a jury trial cannot stand. Since there is no longer an adversarial contest in this regard, respondents respectfully suggest that petitioners are entitled to a summary reversal on the jury trial issue, *albeit on that issue alone.*

(a) Briefing and argument to the court of appeals in this case had been completed prior to *Terry*. Thus, the question of *Terry*'s application to the LMRDA damages claims presented here was never fully explored. Indeed, the court of appeals decisions in this case came out on the heels of this Court's *Terry* decision, and the court below did not cite or discuss *Terry*.

On these and other bases, our brief in opposition urged that *Terry*'s application to LMRDA cases was not an issue worthy of this Court's plenary consideration at this time, particularly since no other court of appeals had yet reached the issue.

(b) Now, however—upon further study for purposes of preparing this brief on the merits—we have concluded that whatever the correct result under pre-*Terry* law, *Terry does indeed control this case. Terry*'s reasoning begins from the principle that "[g]enerally, an action for money damages," even if "representing backpay and benefits," is an action for *legal relief* that generates a right to a jury trial. 58 L.W. at 4348. The *Terry* Court then concluded that in light of its prior rulings in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), *Tull v. United States*, 481 U.S. 412 (1987) and *Curtis v. Loether*, 415 U.S. 189 (1974), an employee's damages claim against a union for breach of its duty of fair representation has "none of the attributes that must be present before [a court] will find an exception to the general rule." 58 L.W. at 4348. It follows from *Terry*, *Granfinanciera*, *Tull* and *Curtis* that here too the general rule that a plaintiff who brings an action for money damages has a right to a jury trial—rather than any of the exceptions to that rule—applies. Respondents thus agree

that petitioner is entitled to a jury trial of his LMRDA damage claims and that the court of appeals erred in denying petitioner a jury trial.

Accordingly, the remainder of this brief will be devoted to petitioner's additional claim that § 301 of the Labor Management Relations Act creates a federal cause of action for any claims by a union member against his union for breach of the union's constitution. *See* 29 U.S.C. § 185.

II. SECTION 301 OF THE LABOR-MANAGEMENT RELATIONS ACT DOES NOT CREATE A FEDERAL CAUSE OF ACTION UNDER WHICH A UNION MEMBER MAY SUE HIS UNION FOR AN ALLEGED VIOLATION OF THE UNION CONSTITUTION.

A. The Plain Language of § 301 Does Not Expressly Refer To The Enforcement Of Union Constitutions By Union Members.

Neither the specific language of § 301 nor the legislative history of the clause in question granted federal courts jurisdiction in an action where a union member has sued his union for a violation of the union constitution. In our analysis "[w]e begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Comm'n v. GTE Sylvania*, 447 U.S. 102, 108 (1980).

The statutory language which controls the issue in this case is that of § 301(a) of the Labor Management Relations Act of 1947:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may

> be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

We are here particularly concerned with that portion of § 301(a) which grants jurisdiction over "suits for violations of contracts * * * between any such labor organizations" (i.e., "labor organizations representing employees in an industry affecting commerce * * * ").

This Court, in an earlier decision on union constitutions, interpreted the language literally in finding that a subordinate labor organization could sue its international union on its constitution under § 301. *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981). There the Court utilized a literal reading of the clause "between any . . . labor organization" to allow the maintenance of the action between the international union and its local union, as labor organizations.

No reading of § 301, however, supports a conclusion that suits may be brought on the implied contact between unions and their members. The failure to include such a cause of action in § 301 is not remedied by the legislative history of the clause. As this Court has noted, there is no legislative history here:

> "[T]here is no specific legislative history on that phrase to explain what Congress meant. The provision for suits between labor organizations was inserted late in the bill's history by the House-Senate Conference Committee. H.R. Rep. No. 510, 80th Cong., 1st Sess., 65-66 (1947); N.L.R.B., 1 Legislative History of the Labor Management Relations Act, 1947, at 1535, 1543; see *Retail Clerks v. Lion Dry Goods, Inc.*, 369 U.S. 17, 26, 49 LRRM 2670 (1962). The Conference Report and postconference debates contain no explanatory remarks about this addition. The only reference to the clause was made in a summary of the Act prepared by Senator Taft and in-

> serted in the Congressional Record, which merely recited: "Section 301 differs from the Senate bill in two respects. Subsection (a) provides that suits for violation of contracts between labor organizations, as well as between a labor organization and an employer, may be brought in Federal courts." 93 Cong. Rec. 6445 (1947), 2 Leg. Hist., at 1543.

Plumbers at 622-23.

To fill this void, petitioner has claimed that a union member is like a third party beneficiary to an agreement between two labor organizations, mirroring the analysis of a union member suing on a collective bargaining agreement in *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962) (Pet. Br. at pp. 22-23). This analogy fails, as we explain *infra* in our discussion about the nature of a union constitution.

B. Prior To The Landurum-Griffin Act, No Federal Statute Regulated Any Aspect Of Union Constitutions.

Not only does the legislative history of § 301(a) fail to support petitioner's extension of jurisdiction, the Congressional purpose of Taft-Hartley shows that petitioner's argument is misplaced. Union constitutions first were regulated by the Landrum-Griffin Act, 29 U.S.C. § 401 *et seq.*, not by Taft-Hartley.

In 1947, Congressional concern was with collective bargaining agreements and their enforceability, not with union constitutions. Congress' "principal motive" in enacting § 301, to provide a forum for the enforcement of collective bargaining agreements (*Dowd Box v. Courtney*, 368 U.S. 502, 510 (1962)), did not apply to individual union members rights under union constitutions. At that time, the prevailing view was that the state courts were available to enforce the provisions of a union constitution, whether brought by a union member or by a subordinate union body. *Machinists v. Gonzales*, 356 U.S. 617, 618-

619 (1958); *Plumbers* at 615; and *NLRB v. Allis-Chalmers*, 388 U.S. 175, 177-78, n.2 (1967). In contrast to collective bargaining agreements, the enforceability of a union constitution was "not a part or parcel of the abuses against which" § 301 was aimed. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 458 (1957).

The passage of the Landrum-Griffin Act in 1959 confirms "that union self-government was not regulated in 1947." *Allis-Chalmers Mfg. Co.*, at 194.[3] At that time, union constitutions were brought to the forefront of Congressional regulation. The 1959 Act, which was "the first comprehensive regulation . . . of internal union affairs," reflected Congress' "long-standing policy against unnecessary intrusion into internal union affairs." *Wirtz v. Local 153 Glass Bottle Blowers Ass'n.*, 389 U.S. 463, 470-471 (1968). Congress intended to allow "unions great latitude in resolving their own internal controversies" (*Calhoon v. Harvey*, 379 U.S. 134, 140 (1964)) without unwarranted interferences by the federal judiciary. *Boilermakers v. Hardeman*, 401 U.S. 233, 243-245 (1971).

This was also the view of contemporary legal scholars. Professor Cox wrote "the act is the first major step in the regulation of the internal affairs of labor unions. . . . Previously national policy was confined to relationships between management and union." Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 852.

The competence of state courts to interpret union constitutions was expressly preserved by Sections 103, 403

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[3] Although courts are reluctant to infer legislative history from the actions of subsequent legislatures, as this Court has observed, courts "may properly take into account the later (Landrum-Griffin) Act when asked to extend the reach of the earlier (Taft-Hartley) Act's vague language to the limits which, read literally, the words might permit." *NLRB v. Drivers Local Union*, 362 U.S. 274, 291-292 (1960); *NLRB v. Allis-Chalmers Mfg. Co., supra*, 388 U.S. at 194.

and 603(a) of the Landrum-Griffin Act, 29 U.S.C. §§ 413, 483, 523(a). Section 103 provides that preexisting state laws are not affected by Title I of the Act, the Bill of Rights of union members.[4] Similarly, Section 403 prescribes that "[e]xisting rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by" Title IV, which regulates internal union elections. Section 403 thus specifically allows for suits in state courts to enforce rights granted by union constitutions.[5] Finally, Section 603(a) prescribes that, unless expressly provided otherwise, the Act was not intended to "take away any right or bar any remedy to which [union members] are entitled under such other Federal law or law of any state."

In fact one commentator recognized that there may be overlapping rights and remedies under state and federal law. He concluded that state courts interpret union constitutions. Indeed, he opined "the major task of state law is to enforce compliance with the union's own rules." Summers, *Preemption and The Labor Reform Act—Dual Rights & Remedies*, 22 Ohio St. L.J. 119, 144. There is no judicial or legislative indication that Congress recognized the existence, much less intended to preserve, any federal jurisdiction with respect to enforcement of union constitutions by union members under § 301.

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[4] Senator Morse and Representative Teller both expressed opposition to the Congressional refusal to preempt state law. II Legislature History of the Labor-Management Reporting and Disclosure Act of 1959, 1415, 1624.

[5] *Rota v. BRAC*, 489 F.2d 998, 1004 (7th Cir. 1973) (Judge, now Justice, Stevens); *cert. denied*, 414 U.S. 1144; *Calhoon v. Harvey*, 379 U.S. 134, 145-146 (1964) (Stewart, J., concurring). *See also* Note, *Union Elections and the LMRDA's Thirteen Years of Use and Abuse*, 81 Yale L. J. 407, 555 (1972).

C. A Union Member's Relationship With His Union Creates A Separate Contract Not Intended By Congress To Be Actionable Under § 301.

In 1981, the Court held that a union constitution embodies a "contract between labor organizations" conferring § 301 jurisdiction under which a labor organization may sue another in federal court for violation of their contractual obligations to one another. *Plumbers*, *supra*. The Court noted that the Courts of Appeals were unanimous in finding that a union constitution can be a "contract between labor organizations" within the meaning of § 301(a). *Id.* at 620. The Court further discussed the prevailing state law view that a union constitution can create a contract between members and a union. The Court particularly noted the state law view, widely held around the time § 301 was enacted, that a union constitution could embody a contract between parent and local unions. *Id.* at 621. The Court noted the dearth of legislative history regarding the "contracts between labor organizations" provision of § 301(a), and stated that:

> It is no doubt true that the primary purpose of the Taft-Hartley Act was to "promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process." *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962); see *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 452-455 (1957).

Id. at 623. The Court went on to find that:

> Surely Congress could conclude that the enforcement of the terms of union constitutions—documents that prescribe the legal relationship and the rights and obligations *between the parent and affiliated locals*—would contribute to the achievement of labor stability.

Id. at 624. (Emphasis added). The Court thus found that there is § 301 jurisdiction for such suits. The Court did not decide, however, whether an individual union

member could bring suit on a union constitution under § 301. *Id.* at 627, n.16. It is submitted herein that such a reservation was well founded, and that the Court should now find that § 301(a) creates no cause of action for an individual suing his union for an alleged breach of its constitution.

This Court has recognized that, unlike collective bargaining agreements, union constitutions are "contracts that are said to be implied by law." *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 300 (1971). Different aspects of a union constitution give rise to differing implied contracts. As this Court noted:

> We have also noted that the prevailing state-law view is that a union constitution is a contract. *Machinists v. Gonzales*, 356 U.S. 617, 618-619 (1958) (discussing *that aspect of union constitution constituting a contract between members and union*).

Plumbers at 621. (Emphasis added). The Court in *Plumbers* noted that the prevailing state law view, around the time of the passage of the Taft-Hartley Act, was that the union constitution could embody a contract between a parent labor organization and its local unions. *Id.* at 621.

A review of the state law cases cited by the Court in *Plumbers* demonstrates that the relationship between a parent union and its locals is just one of the implied contracts supported in part by a union constitution. Often, that implied contractual relationship was based upon the union constitution plus other documents and activities, such as acceptance by the local of a charter by the international union. *Locals 1140 and 1145 v. United Electrical, Radio and Machine Workers of America*, 232 Minn. 217, 45 N.W. 2d 498 (1950); *Local 13013, District 50, U.M.W. v. Chikra*, 86 Ohio App. 41, 90 NE2d 154 (1949); *Textile Workers Local 204 v. Federal Labor Union No. 21500*, 240 Ala. 239, 198 1So. 606 (1940); *Alexion v. Tollingsworth*, 239 N.Y. 91, 43 N.E. 2d 825 (1942). That, however, was only one of the implied contracts found around the time of the enactment of Taft-Hartley to be implied from portions of a union constitution. For example, *Chikra, supra*, notes that a union constitution comprised part of a contract "between the members" and also a contract between a parent union and its subordinate bodies. *Id.* 86 Ohio App. at 49. *Alexion, supra*, found contracts among the members and the union, and between the international union and its locals. *Id.*, 289 N.Y. at 96-97.

Prior to passage of the Taft-Hartley Act, three distinct contracts were implied in whole or in part by a union constitution: a contract among the members *inter se*, a contract between the members and the union, and a contract between the local and the international union. *Harris v. Geier*, 112 N.J. Eq. 99, 164 A. 50 (1932). *See also*, 87 C.J.S., Trade Unions, §§ 42-43, pp. 836-842 (1954). Decidedly absent at the time of the passage of the Taft-Hartley Act was any line of cases viewing individual union members as third-party beneficiaries of the implied contracts between their international and local unions. It is submitted that by no leap of faith can it be found that Congress intended, in enacting § 301, to create such a cause of action.

The Court in *Plumbers* noted the lack of legislative history regarding the "contracts between labor organizations" provision of § 301. *Id.* at 623. The Court found that enforcing the contractual obligations of parent and local unions toward one another could have been found by Congress to contribute to the achievement of industrial stability. *Id.* at 624. Certainly, the state cases cited by the Court would bear this out. *Id.* at 621-22. Each of the cited cases involved situations wherein local unions were either attempting to disaffiliate from their parent international, or to both disaffiliate with one international and to join another. *Locals 1140 and 1145, supra*; *Chikra, supra*; *Textile Workers Local 204, supra*; *Alexion, supra; International Union of United Brewery,*

Flour, Cereal, Soft Drink and Distillery Workers of America CIO v. Becherer, 4 N.J. Super. 456, 67 A.2d 900, *cert. denied*, 3 N.J. 374, 70 A.2d 537 (1949); *Bridgeport Brass Workers Union, Local 320 of the International Union of Mine, Mill, and Smelter Workers v. Smith*, 15 Conn. Supp. 505, (Super. Ct. 1948) *aff'd* 136 Conn. 654 (1950). Such cases had a clear and obvious effect upon industrial stability. Employers, uncertain as to which of two competing entities represented their employees, would be disrupted, both by the legal uncertainty and by the preoccupation of their employees. Similarly, in the situation underlying *Plumbers*, contractors would be thrown into disarray by competing jurisdictional claims of locals from the same national union.

None of this can be said, however, where an individual union member sues his union on a claim under the union constitution. It is submitted that, at a period in history when provisions of union constitutions were said to imply a contract between the individual and his union, Congress did not inted to confer federal jurisdiction on suits by individual member by including the "contracts between labor organizations" clause in § 301(a). Surely, it would not have taken such a step without considerable deliberation, and, the lack of legislative history regarding the above provision cautions against such an interpretation, particularly in light of the legislative history of the Taft-Hartley Act which suggests a disinclination to interfere in the internal affairs of unions. *See, e.g., Plumbers* at 625 n.12; *NLRB v. Allis-Chalmers Mfg. Co., supra* at 184. Simply put, a union member is not a "third party beneficiary" of a contract between two labor organizations.

It is here where the petitioner's analogy to *Smith v. Evening News Assn*, 371 U.S. 195 (1962) breaks down. *Smith* involved a collective bargaining agreement which, at the time § 301 was enacted, was recognized as an explicit contract between an employer and a labor organization. Individual employees were not considered parties to such agreements. They were, however, third party beneficiaries.

Union members, however, are parties to contracts implied under the union's constitution. *Machinists v. Gonzales, supra* at 618. The Court, in the context of a preemption analysis, has noted the inapplicability of *Smith* to disputes arising under a union constitution:

> The legislative determination that courts are fully competent to resolve labor relations disputes through focusing on the terms of a collective bargaining agreement cannot be said to sweep within it the same conclusion with regard to the terms of union-employee contracts that are said to be implied in law. That is why the principle of *Smith v. Evening News* is applicable only to those disputes that are governed by the terms of the collective bargaining agreement itself.

Lockridge, supra, 403 U.S. at 300-301.

An individual has no more right to sue his union under § 301 on his implied contract than he has to sue an employer on an individual contract of employment. Neither situation was contemplated by Congress in enacting § 301. That is why the *Gonzales* Court stated that "[t]he protection of union members in their rights as members has not been undertaken by federal law, and indeed the assertion of any such power has been denied." 356 U.S. at 620.

The Court in *Plumbers* rejected the "significant impact" on labor relations test that had been applied by several courts of appeals, noting that such *ad hoc* judgments on jurisdictional sufficiency were belied by the language of § 301(a). Given the Court's determination that Congress could have concluded that labor stability would be enhanced by the ability of unions to enforce contracts made between themselves, no such ad hoc review would be appropriate because all such disputes would raise a

federal question within the intent of the Taft-Hartley Act.

Despite its insufficiencies, the "significant impact" test was aimed at assuring that a federal question arose in § 301(a) suits arising under union constitutions. *Plumbers* taught us that all such suits, when between labor organizations, raise a federal question.

Since the decision in *Plumbers*, the "significant impact" test has also been abandoned by courts of appeals that have found that an individual has a right under § 301 to sue his union on the union constitution. *Kinney v. IBEW.* 669 F.2d 1222 (9th Cir. 1981); *Lewis v. Teamsters Local 771*, 826 F.2d 1310 (3d Cir. 1987). This suggests that a federal question is always raised when a union member make a claim against his union based on the union's constitution. To reach such a conclusion, forty-four years after enactment of the Taft-Hartley Act, requires an enormous leap of faith.

Twelve years after the enactment of the Taft-Hartley Act, Congress enacted the Labor-Management Reporting And Disclosure Act, 29 U.S.C. § 401 *et seq.* (LMRDA). Although courts are hesitant to infer legislative history from the actions of subsequent legislatures "[c]ourts may properly take into account the later [LMRDA] Act when asked to extend the reach of the earlier [Taft-Hartley] Act's vague language. . ." *NLRB v. Drivers Local* 639, 362 U.S. 274, 291-292 (1960). The LMRDA was the first comprehensive regulation by Congress of the conduct of internal union affairs. *NLRB v. Allis Chalmers Mfg. Co., supra*, at 193.

As petitioner points out in his brief, the LMRDA, in addition to its other provisions, federalizes certain aspects of union constitutions. Petitioner states:

> A further problem arises because questions of union constitutional interpretation are often intertwined with the enforcement of federal labor statutes. In

the LMRDA alone, for example, union constitutional issues are implicated in making decisions under four of the five substantive titles. In Title I, Sections 101(a)(1) and 101(a)(2) both subject the rights they create—the equal right to vote and the rights of free speech—to "reasonable rules" in the union's constitution and bylaws; certain dues claims under Section 101(a)(3)(B) turn on the presence of authority in the union constitution. In Title III, trusteeship may only be imposed in accordance with the union's constitution, Section 302, and the presumption of validity of a trusteeship depends on whether it has been imposed consistent with the requirements of the union's constitution. Section 304(c). In Title IV, unions are required to comply with their own constitutions regarding elections, Sections 401(e) and (f), and a variety of rights, such as the rights of every member in good standing to run for office, Section 401(e), are made subject to restrictions in the union's constitution if those restrictions are reasonable. And the fiduciary obligation codified by Title V requires, in part, that a union's funds be expended in accordance with its constitution. Section 501(a).

[Pet. Br. p. 27].

Thus, twelve years following the enactment of § 301, Congress specified areas of union constitutions which were appropriate for federal inquiry pursuant to lawsuits by individual members. These aspects of inquiry are appropriate not as part of the development of a federal common law of individual rights under union constitutions but as a test of a union's compliance with specific statutory responsibilities specified in the LMRDA.

Petitioner has noted "it is not uncommon for the L.M.R.D.A. claim to be accompanied by a claim for breach of the union constitution." [Pet. Br. at 27]. Indeed, such is the situation in the case at hand. Rather than supporting creation of a new federal cause of action, however, this reality militates against it.

The Sixth Circuit Court of Appeals found this to be the case in *Trail v. Teamsters*, 542 F.2d 961 (6th Cir. 1976). The *Trail* court noted that Congress and the courts had provided specific redress for the rights of individual union members through the LMRDA and through suits alleging a violation of the duty of fair representation. *Id.* at 968.

If a federal cause of action is recognized under § 301 for union members to sue their unions under the union's constitution, it does not appear that there would be any reason in law or logic that they could not also sue union officers under the union constitution, or even non-officer fellow union members. The most trivial and remote disputes, without any connection to labor peace and stability, would be federalized. Indeed, the case at hand originates with such a situation, with two brothers whose dispute has spilled over, as an ancillary matter, into their local union.

D. The Federal Courts Are Not An Appropriate Forum For Every Dispute That May Arise Between A Union Member And His Union Under The Union's Constitution.

Section 301 was not intended to "federalize" each and every provision of a union constitution. Claims by members against their union based on its constitution were cognizable in state courts prior to the enactment of § 301 in 1947; prior to the enactment of Landrum Griffin in 1959; and after the enactment of these Acts, up to today.

Petitioner's argument, if adopted by the Court, effectively federalizes all suits by union members on their union constitutions, even though many such suits traditionally have been governed by state law. *Machinists v. Gonzales, supra.* Cf. *Motor Coach Employees v. Lockridge, supra.* Petitioner thus would have the Court reject established precedent and depart from the traditional approach of applying preemption principles to the state

law claims that are brought by union members against their unions. *Steelworkers v. Rawson*, 110 S.Ct. 1904 (1990); *Electrical Workers v. Hechler*, 481 U.S. 851 (1987); *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985); *International Union of Operating Engineers Local 406 v. NLRB*, 460 U.S. 669 (1983); *Farmer v. Carpenters*, 430 U.S. 290 (1977); *Lockridge, supra*; *Plumbers v. Borden*, 373 U.S. 690 (1963); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959); and *Gonzales, supra.*

In the instant case, the Sixth Circuit Court of Appeals addressed petitioner's assertion that his claim under the union constitution, absent jurisdiction under § 301, could be prosecuted as a pendent state law breach of contract claim. The Sixth Circuit rejected this assertion by finding that any such claim is preempted by § 301.[6] The court of appeals' holding properly applied preemption principles to the petitioner's breach of contract action, which cited the union constitution's requirement that local unions comply with their collective bargaining agreements. (JA-12). Insofar as petitioner alleged that respondents failed to comply with the hiring hall referral procedure established in the local union's collective bargaining agreements (JA 8-10) and such alleged failure provided the primary basis for petitioner's breach of contract claim under the union constitution, such claim is "inextricably intertwined with consideration of the terms of the [union's] labor contract [s]." *Allis-Chalmers Corp. v. Lueck, supra* at 213. As a state law claim, therefore, petitioner's cause of action under the union constitution

[6] Petitioner has not raised in this appeal the question of whether his claim under the union constitution, if determined to be a breach of contract claim under state law, is preempted by federal law. The Petitioner thus apparently concedes that the Sixth Circuit Court of Appeals' holding on this question was correct—i.e., that if the Petitioner's claim under the union constitution constitutes a pendent state law claim for breach of contract, such claim is preempted under § 301 of L.M.R.A.

properly was determined to be preempted under § 301. *Electrical Workers v. Hechler, supra; Lueck, supra;* see also, *Steelworkers v. Rawson, supra.* Further, to the extent that petitioner's claim under the constitution is based upon allegations of conduct related to the union's hiring hall, which conduct is "actually or arguably protected or prohibited by the NLRA", *International Union of Operating Engineers Local 406, supra,* at 676, such state law claim would also be preempted under this Court's holding in *San Diego Building Trades Council v. Garmon, supra.* See *Plumbers v. Borden, supra;* cf. *Breininger v. Sheet Metal Workers Local 6,* 110 S.Ct. 424 (1989); and *Teamsters Local 357 v.* NLRB, 365 U.S. 667 (1961).

In other cases, it has been determined that the preemption doctrine does not apply. See, e.g. *Farmer v. Carpenters, supra; Linn v. Plant Guard Workers,* 383 U.S. 53 (1986). Where a certain activity was "a merely peripheral concern of the Labor Management Relations Act . . . [or] touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, [the Court] could not infer that Congress had deprived the states of the power to act." *Garmon, supra,* at 243-44.

Should the Court determine that all suits brought by union members under their union constitutions are subject to federal jurisdiction under § 301, a case-by-case determination of whether such suits are preempted will no longer be necessary. However, the federal courts will be open for litigation of internal union disputes that have no impact on collective bargaining relationships or federal labor law. Such was not the intent of Congress in enacting § 301, and, while petitioner's approach to this issue (i.e., the federalization of all claims based upon alleged violations of union constitutions) may provide the simplest "solution to case-by-case questions of preemption, there is simply no legislative history to support this approach. Rather, a long line of precedent supports the application of state law (in state court sor, pursuant to pendent jurisdiction, in federal court) for all claims by union members that are based upon their union constitution and which are not preempted.[7]

Federalizing union constitutions would involve the federal judiciary in endless minutia, where members are suing the union or a union officer or a fellow member. For example, petitioner claimed that he was subjected to charges that were filed against him by his brother, Buck (JA pp. 9-10). No action was even taken by the Union on these charges, and this claim, which was dismissed by the lower court (JA 9-10, Pet. App. A-6, A-7), is not before this court. These charges merely constituted a continuation of a fraternal feud, which happened to involve one brother who was a union officer. The incident ended abruptly in a shouting match between the brothers (Pet. App. A-7); no action was taken by the Union; and no economic harm was suffered by the petitioner.

A cursory review of the IBEW Constitution reveals many other potential inane disputes that could result in federal litigation. Article XVII, Section 2 provides in pertinent part that local union meetings be adjourned no later than 11:00 p.m. (JA-22). If a discussion on payment of a bill begins at 10:30 and does not conclude until 11:15, when a vote is taken to authorize payment of the bill, should a member be allowed to sue in federal court to prevent the payment of such bill? Certainly Congress never intended to confer federal jurisdiction over such disputes, which are unrelated to collective bar-

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[7] In this area, this Court has not slavishly pursued a policy of uniformity. In *Reed v. UTU,* 488 U.S. 319 (1989) a uniform six-month federal statute of limitations for LMRDA § 101(a)(2) claims, following *DelCostello v. Teamsters,* 462 U.S. 151 (1983), was rejected in favor of borrowing from the state general or residual personal injury statutes necessitating a state-by-state determination.

gaining or the areas of labor relations that are otherwise subject to federal regulations.

Or, consider the duties of the President, among which are that he conduct an orderly meeting and "have removed from the meeting . . . anyone who disturbs the harmony or peace of a meeting." (JA-29, Article XIX). If the membership is debating a proposed collective bargaining agreement and some of the discussion rises to a level of shouting, should a member be allowed to sue the union or the president in federal court for specific performance of this provision? Potentially, the vote on the collective bargaining agreement could be challenged solely on this constitutional provision.

Of course, the provisions of union constitutions should not be federalized. This could cause the courts to become enmeshed in the trivialites of the daily affairs of unions in a way not contemplated by Taft-Hartley or Landrum-Griffin. In 1959 Landrum-Griffin decreed that some internal affairs of unions, *vis a vis* their members, be reviewed by the federal judiciary, e.g., Title I, 29 U.S.C. 401 et seq. At the same time, it recognized that other internal affairs would continue to be reviewed in state courts, 29 U.S.C. 413. This distinction has been recognized subsequent to *Plumbers*. *See Gable v. Iron Workers*, 695 F. Supp. 1174 (N.D. Ga. 1988), wherein a local's business agent sued on the union's By-Laws for three weeks of vacation pay, and the Court held there was no § 301 jurisdiction.

CONCLUSION

Based upon the foregoing analysis, it is respectfully submitted that Congress never intended, in 1947, to confer federal jurisdiction under § 301 over suits by individual union members based upon their union constitution. It is submitted that there is no reason arising out of the case at hand for the Court to expand the interpretation of § 301 to encompass such a cause of action. The Court of Appeals' decision on this issue should be affirmed.

Respectfully submitted,

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FOR ARGUMENT

(7)

NO. 90-967

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

GUY WOODDELL, JR.,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Petitioner's opening brief advanced three basic arguments in support of his right to sue in federal court to enforce his union's constitution. First, it argued that in 1981 this Court had decided the fundamental question on which this case turns -- that a union constitution is a "contract between labor organizations" within the meaning of section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185 -- and that the Court's reasoning was fully applicable to suits brought by individual union members against their unions. Petitioner's Brief ("Pet. Br.") at 19-22, *citing Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981). Second, it argued that the effort of the court below to distinguish *Plumbers*

on the ground that section 301 applied because the suit there was "between labor organizations," but this suit is between a union and its member, was flatly inconsistent with *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962), where the Court held that the "between" clause in section 301 modified the *contracts* that were subject to section 301, and not the *lawsuits* that were governed by it. Pet. Br. at 22-23. Third, the opening brief explained a variety of ways in which a holding that the enforcement of union constitutions was governed by federal law only when unions were the parties to the suit, but by state law when a member was a party as well, would be untenable, because it would produce forum-shopping, inconsistency of results, uncertainty about the meaning of union constitutions, and ultimately lessened stability in labor relations. Pet. Br. 23-28.

Respondents' brief makes no direct reply to either the second or the third argument. In response to the first argument, respondents contend that, although parts of a union constitution are a contract between unions, other parts are a contract between the union and its members, and only the former are governed by section 301. Respondents' Brief ("Resp. Br.") at 10-12, 15-17. This reply brief first explains the flaws in this analysis, and then demonstrates that respondents' remaining arguments either repeat the legislative history arguments that were advanced and rejected in *Plumbers*, or otherwise lack a sound basis.[1]

1. Respondents' principal argument is that a union constitution contains several different kinds of contracts. One of them is conceded to be a contract between unions, as the Court held in *Plumbers*, but they also include a contract among individual members and a contract between members and the union. Under respondents' analysis, only that part of the constitution that is between unions may be the basis for a cause of action under section 301.

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[1] Respondents concede that petitioner has a right to a jury trial on his claims under the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"). Accordingly, petitioner will not address that issue in this reply or at oral argument, except to respond to questions from the Court.

This argument, however, has two principal flaws. The first is that it posits a wholly artificial and unworkable distinction among parts of a union constitution that would henceforth determine both federal jurisdiction and the source of the law governing the case. Henceforth, the first task in every case under a union constitution would be to decide to which contract category the particular clause belonged. Of course, union constitutions are not neatly labeled according to respondents' novel categories, and respondents have not advanced any method of deciding how to characterize a given clause. Presumably, respondents assume that the Court will treat those portions of the constitution that are at issue in this case, and that protect individuals against wrongdoing by officials, as being part of the "individual" contract. However, this assumption overlooks the fact that the constituent unions that formed the contract in the first place may have insisted upon such protections as a condition of their forming the International, just as some of the thirteen sovereign colonies insisted upon the addition of a Bill of Rights as a condition of the ratification of the United States Constitution.

Moreover, under respondents' theory, a suit could involve some clauses that were federal and some that were state. Each clause would then have to be construed under a separate legal doctrine, and the remedies for violations of the different clauses would be governed by the different doctrines as well. In short, respondents have proposed an unmanageable rule, and hence it is not surprising that they have been unable to cite a single case that adopts their distinctions, or that denies a right of action on the ground that the wrong kind of contract is involved. To the contrary, all that respondents have cited, in their effort to show the general understanding about the nature of union constitutions at the time section 301 was enacted, Br. 16-17, are some cases that treat constitutions as one kind of contract, and some that treat them as another kind, in each case concluding that a cause of action could be brought on the contract. However, this debate about the nature of the union constitution, at least for purposes of section 301 coverage, was resolved by this Court in *Plumbers*.

The second flaw in respondents' segmentation argument is in its assumption that, even if constitutions could be divided in the

suggested manner, an individual member may not sue to enforce those portions of the constitution that are section 301 contracts. This assumption pervades respondents' brief, but nowhere is the proposition argued and established. The closest that respondents come to making an argument on this subject is to say that there is no legislative history to show that Congress intended to grant individual members a right to sue. Br. at 17, 18. But this Court has already decided that the same statute authorizes individual beneficiaries to sue once a particular contract has been determined to be within the ambit of section 301. *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). The basis for the holding in *Smith* was not the statute's legislative history, for there is little more legislative history on the meaning of section 301 as it applies to collective bargaining agreements ("CBAs") than there is pertaining to union constitutions. Rather, the basis for the holding in *Smith* was the plain language of the statute, making it clear that all suits based on section 301 contracts were within the statute, and that the word "between" in section 301 modified the parties to the contract, not the parties to the suit. Because the language was clear there was no need to resort to legislative history.[2]

2. Respondents repeatedly recite the enactment of the LMRDA in 1959 to bolster their argument that union constitutions may not be enforced under federal law when an individual member is the plaintiff. Respondents concede that this Court has been increasingly reluctant to rely on the actions of a subsequent Congress to find the legislative intent of a previous Congress, but they fail to take this admonition to heart. Nor do respondents acknowledge that the LMRDA argument was made and rejected in *Plumbers*. *See* Brief for Respondents in *Plumbers*, at 18-20; 451 U.S. at 626 n.14.

Indeed, respondents do not even rely on what Congress

[2] Respondents also seek to distinguish *Smith* by contrasting that case, where the Court was concerned that individual employees' claims under a CBA might affect labor-management relations, with the issues that arise under union constitutions that supposedly lack such impact when an individual member is a plaintiff. Although petitioner's opening brief, at 23-24, 25-26, cited numerous situations in which that impact would be felt, respondents simply ignore those arguments.

actually enacted in 1959, but rather on what respondents describe as the assumptions of some members of Congress about the nature of existing law. There is no question that Congress considered existing law to be inadequate to protect the rights of individual members and the democratic process as a whole, and that it was for this reason that Congress chose to enact a comprehensive regulation of intra-union affairs. But that assumption is not inconsistent with the proposition that union constitutions may be enforced by their members; Congress simply concluded that the protections of union constitutions alone were inadequate, and that minimum statutory standards were required to protect union members, in addition to allowing members to enforce their union constitutions.

Nor did the language of the LMRDA embody the assumption that constitutions were to be enforced under state law. Respondents erroneously cite sections 103, 403, and 603(a) of the LMRDA, 29 U.S.C. §§ 413, 483, and 523(a), for that proposition. Br. at 13-14, 26. However, section 103 does not, as respondents suggest, simply preserve state remedies under union constitutions; by its terms, it provides that Title I of the LMRDA does not preempt "rights and remedies . . . under any State or Federal law, or under the [union's] constitution and bylaws . . .." Section 603(a) likewise preserves both state and federal law rights and remedies. And section 403 preserves all "existing rights and remedies to enforce the constitution," not just those under state as opposed to federal law. Thus, whatever assumptions certain members of Congress may have made about the availability of state law, those assumptions were not enshrined in the LMRDA, and the passage of that statute does not undercut petitioner's claim here.[3]

3. Respondents' brief, at 19, invokes a passage in *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 300-301 (1971), that courts are not competent to resolve disputes about the meaning

[3] We note, however, the inconsistency between these anti-preemption provisions, in which Congress expressed its intent to allow members to continue to sue to enforce their rights under union constitutions, and respondents' argument made elsewhere in their brief, at 23-25, that such state law claims are preempted by section 301.

of "union employee contracts that are said to be implied in law," a phrase which respondents properly treat as referring, in context, to suits over union constitutions. In *Lockridge*, however, the employee had sued under state law, and the only question was whether federal law preempts such state law claims under the principles of *San Diego Bldg. Trade Council v. Garmon*, 359 U.S. 236 (1959). The opinion repeatedly referred to the question presented as being whether local law and state court jurisdiction were defeated by the principles of NLRA preemption. *E.g.*, 403 U.S. at 285, 288-289, 290. The Court was not presented with the question of whether a federal claim, based on the union constitution, could be pursued under section 301. Any dictum in *Lockridge* implying that no law authorizes a suit on the union constitution is inconsistent not only with this Court's later rulings in such cases as *Plumbers*, but also with more recent cases involving the duty of fair representation that have authorized individual members to sue to enforce contractual promises made to them by unions. *See Steelworkers v. Rawson*, 110 S. Ct. 1904, 1912 (1990).

4. Finally, respondents argue that allowing union members to sue to enforce their constitution under section 301 would embroil the courts in picayune disputes about such issues as whether a meeting should have continued past 11 p.m. It seems exceedingly unlikely that the minor disputes imagined by respondents would lead to the retention of counsel and the filing of litigation, but the question in this case, as limited by the Court's revision of the second Question Presented, is not, as respondents' arguments suggest, whether claims under the union constitution may be litigated at all, although respondents do suggest that some constitutional claims are preempted. Br. at 25.[4] Instead, the

[4] Respondents err in contending, Br. at 7 n.2, 23 n.6, that petitioner did not seek to present that question for this Court's review. However, the Court, in granting certiorari in this case, rewrote the second Question Presented with the evident objective of excluding the preemption question from this case. Similarly excluded from the Question Presented is whether an individual officer or member may be sued under section 301. The Court thus has no occasion to decide whether section 301(b) protects individual members against damages awards based on constitution violations, as it protects them against damages for violation of a CBA. *Complete Auto Transit v. Reis*, 451 U.S. 401 (1981).

question is whether the cases are governed by section 301, and thus whether there is federal jurisdiction, and whether the principles of federal law govern the outcome. The alternative to a federal cause of action is not no litigation but state court litigation, with state courts interpreting national unions' constitutions under state law.

Underlying respondents' arguments is an unspoken attempt to reinstate the proposition that only suits that pass a "significant impact on labor relations" test may be maintained under section 301. That notion was decisively rejected in *Plumbers* as having no basis in the language of the statute, and it should not be resurrected here.

It may well be that union constitutions have minor provisions that may, in the abstract, seem unworthy of litigation. Indeed, many such provisions may actually not be worth litigating. Most if not all of respondents' hypotheticals would never reach the point of litigation due to the risk and cost involved, especially given the fact that individual union members are likely to be the parties most lacking in resources. Moreover, many provisions of CBAs may similarly be so trivial as not to be worth litigating, but that has never been a reason to forbid individual employees from suing to enforce their rights under section 301.

To the extent that cases under constitutions arise, the fact remains that they may also have an important bearing on labor relations matters, as petitioner's opening brief observed. If the price to be paid for federal court oversight concerning the application of union constitutions to such controversies is that the courts may also have to address less consequential matters, however infrequently, then we submit that the price of federal uniformity is worth paying.[5]

[5] This Court has avoided the floodgates problem in the CBA context by erecting barriers to litigation. *E.g.*, *Paperworkers v. Misco*, 484 U.S. 29 (1987). Comparable limits may ultimately be developed in enforcing union constitutions, but such issues are not presented at this stage of the proceedings.

CONCLUSION

The judgment of the court of appeals denying the right to jury trial and affirming the dismissal of the claim on the union constitution should be reversed, and the case remanded for further proceedings.

Respectfully submitted,

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IN THE

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GUY WOODDELL, JR.,

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Respondents.

ON WRIT OF *CERTIORARI* TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE AND BRIEF *AMICUS CURIAE* OF THE ASSOCIATION FOR UNION DEMOCRACY AND THE AMERICAN CIVIL LIBERTIES UNION, IN SUPPORT OF PETITIONER

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ON WRIT OF *CERTIORARI* TO THE
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FOR THE SIXTH CIRCUIT

MOTION OF THE ASSOCIATION FOR UNION DEMOCRACY AND THE AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Association for Union Democracy (AUD) and the American Civil Liberties Union (ACLU) respectfully move for leave to file the annexed brief *amicus curiae* in this case. Petitioner has consented to the filing of this brief; respondents have refused to give their consent.

The AUD is a nonprofit corporation founded in 1969 which seeks to further democratic principles and practices in American labor organizations, both by encouraging union members to participate actively in the life of their unions, and by protecting the exercise of their democratic rights within their unions. No other organization devotes itself primarily to this objective.

The sponsors of the Association include former leaders of major unions, religious leaders, members of union public review boards, lawyers, prominent educators in labor studies and labor law, and numerous union members. Despite divergent backgrounds, all share the view that the labor movement is one of the great forces which helps sustain democracy in our national life and that, if the labor movement is to serve this purpose, union leaders must be responsive to their members, and unions must be democratic and just in their internal operations.

The ACLU is a nationwide, nonprofit, nonpartisan organization with over 275,000 members dedicated to the principles of liberty and equality embodied in the Constitution. For over forty years, the ACLU has supported efforts in Congress and in the courts to recognize and strengthen the rights of union members to internal union democracy. Indeed, as commentators have noted, the legislative campaign that eventually culminated in the enactment of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) "was formally launched by the American Civil Liberties Union [when it] submitted a 'Trade Union Democracy' Bill to the Congress during the 1947 hearings on new labor legislation." Aaron, "The Labor-Management Reporting and Disclosure Act of 1959," 73 Harv.L.Rev. 851 (1960). *See also* Rothman, "Legislative History of the 'Bill of Rights' for Union Members," 45 Minn.L.Rev. 199, 201-06 (1960).

Because the right of union members to enforce their

democratic rights is implicated by this case, the AUD and the ACLU respectfully seek leave to submit this brief *amicus curiae* for the Court's consideration.

Respectfully submitted,

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INTEREST OF *AMICI*

The interest of the Association for Union Democracy (AUD) and the American Civil Liberties Union (ACLU) is set forth in the accompanying motion for leave to file this brief *amicus curiae*.

STATEMENT OF THE CASE

Petitioner is a member of respondent International Brotherhood of Electrical Workers (IBEW), Local No. 71. He brought this suit under Title I of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §401, *et seq.*, alleging (1) that the union discriminated against him in job referrals as retaliation for his opposition to an announced increase in union dues and the appointment of certain union representative, and (2) that the disciplinary proceedings initiated against him by the union violated due process. In addition, petitioner contended in his complaint that respondents' actions were inconsistent with the union constitution, and that this breach was redressable in federal court under §301(a) of the Labor Management Relations Act (LMRA), 29 U.S.C. §185(a).

The lower courts held that petitioner was not entitled to a jury trial of his claim under the LMRDA and that the federal courts do not have jurisdiction over suits for violation of union constitutions, if those suits are brought by union members.[1] In reaching this conclusion, the court of appeals relied on its earlier decision in *McCraw v. Plumbers and Pipefitters*, 341 F.2d 705, 709 (6th Cir. 1965), to deny petitioner's right to a jury trial, without analyzing whether the statute or the Seventh

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[1] Citing this Court's decision in *Breininger v. Sheet Metal Workers*, ___ U.S. ___, 110 S.Ct. 424 (1989), the Sixth Circuit reversed the district court's dismissal of petitioner's claim under Title I.

Amendment required a jury trial. The court of appeals also relied on an earlier decision, *Trail v. Teamsters*, 542 F.2d 961, 968 (6th Cir. 1976), to deny federal jurisdiction under §301(a) for suits brought by union members to enforce union constitutions, despite this Court's intervening decision in *Plumbers & Pipefitters v. Local 334*, 452 U.S. 615 (1981), which upheld the right of a union local to enforce the union constitution under §301(a).

SUMMARY OF ARGUMENT

I. Union members suing to enforce rights guaranteed by Title I of the LMRDA, 29 U.S.C. §§411-15, are entitled to a trial by jury. The structure and legislative history of Title I establish the intent of Congress to provide for a jury trial. In part because it did not want to deprive union members of a jury trial in Title I enforcement cases, Congress rejected a proposal to allow only the Secretary of Labor to enforce Title I rights in favor of a proposal allowing individuals to bring suit. This construction of the LMRDA, supported by the terms of the statute and the legislative history, allows the Court to avoid reaching the constitutional question of whether a trial by jury of Title I claims is required by the Seventh Amendment.

If the Court determines it must resolve the constitutional issue, the result is the same: the Seventh Amendment requires a jury trial, upon demand, of actions brought under Title I. The Court has developed a two-part test to determine whether the Seventh Amendment requires a jury trial: (1) whether the action is analogous to any 18th century English action at law prior to the merger of law and equity; and (2) whether the remedies sought are legal in nature. Title I actions meet both parts of this test. First, actions brought to enforce rights created by statute are most closely analogous to personal injury actions that were recognized by the common law.

Second, legal remedies, including compensatory and punitive damages, are available in Title I actions and have been awarded to numerous Title I plaintiffs.

II. Section 301(a) of the LMRA, 29 U.S.C. §185(a), creates a federal cause of action for union members seeking to enforce a union constitution.[2] That result follows logically from this Court's decisions that local unions may sue under §301(a) for violation of a union constitution, *Plumbers & Pipefitters v. Local 334*, 452 U.S. 615, and that individual employees may sue under §301(a) for violation of a collective bargaining agreement, *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). Moreover, the plain words of the statute grant jurisdiction based on the existence of a contract (including a union constitution), not on the identity of the party seeking to enforce the contract. There is no indication in §301(a) or its legislative history that Congress meant to prohibit suits by individual union members.

ARGUMENT

I. PLAINTIFFS SEEKING DAMAGES UNDER TITLE I OF THE LMRDA ARE ENTITLED TO TRIAL BY JURY

A. Congress Intended To Provide A Right To Jury Trial When It Enacted Title I

The LMRDA was enacted to alleviate two serious and related problems within the labor movement: the corruption and racketeering that had been exposed by the McClellan Committee (the Select Senate Committee on Improper Activities in the Labor or Management

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[2] By arguing for federal court jurisdiction, *amici* are not suggesting that state court actions to enforce union constitutions are preempted by federal law; that is a separate issue that the Court need not address at this time.

Field), and the autocracy and lack of democracy that characterized the internal governance of many unions. *See* S.Rep. No. 187, 86th Cong., 1st Sess. 2 (1959), *reprinted in* NLRB, Legislative History of the LMRDA 398 (1960)(hereinafter "Leg.Hist."). Title I therefore specifies certain rights of union members and provides for enforcement of those rights in the federal courts.

The provisions of Title I are modeled on the Bill of Rights in the United States Constitution, *Steelworkers v. Sadlowski*, 457 U.S. 102, 111 (1982). Indeed, the legislative proposal that eventually became Title I was introduced in Congress under the heading "Bill of Rights of Members of Labor Organizations." *See Finnegan v. Leu*, 456 U.S. 431, 435 (1982). Consistent with that description, §101(a)(1), 29 U.S.C. §411(a)(1), grants members equal rights to participate in union affairs; §101(a)(2) grants members the right to freedom of speech and assembly, 29 U.S.C. §411(a)(2); §101(a)(3) grants members a secret ballot vote on dues increases, 29 U.S.C. §411(a)(3); §101(a)(4) protects the right of members to sue their union, 29 U.S.C. §411(a)(4); and §101(a)(5) grants members due process in union disciplinary proceedings, 29 U.S.C. §411(a)(5).

Title I was added to the proposed bill regulating internal union affairs, S.1555, in an amendment offered by Senator McClellan. 2 Leg.Hist. 1102. In describing the purpose of his amendment, Senator McClellan stated: "[T]he rights which I desire to have spelled out in the bill are not now defined in the bill. Such rights are basic. They ought to be basic to every person, and they are, under the Constitution of the United States." *Id.* at 1104-05.

Under the McClellan amendment, however, the judicial enforcement of Title I rights would have rested sole-

ly with the Secretary of Labor. *Id.* at 1102.[3] One of the issues expressly raised during the floor debate was the impact of this enforcement procedure on jury trials. *Id.* at 1111-14. In the words of Senator John F. Kennedy:

> . . . I stood on the floor of the Senate and voted for jury trials in all cases of injunction with respect to voting rights. Yet the [McClellan] amendment . . . would deny the right of jury trial in all cases involving the rights of millions of Americans if the Secretary of Labor gets an injunction. I do not see how any Senator who voted for the right of jury trial in voting cases can deny the right of all theses citizens to a jury trial.

Id. at 1112.

In response to these and other concerns, Senator Kuchel introduced a substitute Bill of Rights, which was adopted on April 24, 1959. 2 Leg.Hist. 1239. Of particular relevance, the Kuchel amendment created a private right of action for union members seeking to enforce the substantive provisions of Title I.[4] As enacted, §102 does

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[3] The proposed amendment provided as follows: "Sec. 103. The Secretary, whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, may bring an action in a district court or other court of the United States for such relief as may be appropriate including, but without limitation, injunctions to restrain any such violations and to compel compliance with this title. Any such action against a labor organization may be brought in the United States District Court for the District of Columbia or in the district court or other court of the United States where the violation occurred or is about to occur." 2 Leg.Hist. 1102.

[4] Section 102 of the Kuchel amendment provided as follows: "Any person whose rights secured by the provisions of this title have been infringed may bring an action in a district court of the United States for such relief as may be appropriate. Any such action against a labor

(continued...)

not expressly refer to jury trials. But the fact that the plain language of the statute does not resolve the jury trial issue only means that the Court must "determine congressional intent, using [its] traditional tools." *Dole v. United Steelworkers*, ___ U.S. ___, 110 S.Ct. 929, 934 (1990). *See also NLRB v. Food & Commercial Workers*, 484 U.S. 112, 123 (1987).

Here, it is clear from the legislative history that one of the principal reasons for eliminating the role of the Secretary of Labor in Title I enforcement actions was to provide for the right to a jury trial. In discerning legislative intent, this Court has often looked to the statements of individual legislators as relevant (albeit not dispositive) evidence. *See, e.g., Brock v. Pierce County*, 476 U.S. 253, 263 (1986); *Grove City College v. Bell*, 465 U.S. 555, 567 (1984). More generally, this Court has recognized in analogous contexts that a congressional decision to substitute (or supplement) government enforcement with private enforcement is the sort of structural change that strongly suggests congressional intent to provide for jury trials.

For example, in *Lorillard v. Pons*, 434 U.S. 575 (1977), the Court held that there is a right to jury trial under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §621, *et seq.*, even though the statute does not expressly provide for a jury trial. The Court examined the legislative history of the ADEA and was persuaded that the congressional decision to provide for a private right of action, rather than vest sole enforcement powers with the Secretary of Labor, supported

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[4] (...continued)
organization shall be brought in the United States district court for the district where the alleged violation occurred or where the headquarters of such labor organization is located." The words "(including injunctions)," which appear in the enacted statute, were added in conference. *See* H.R. Conf. Rep. No. 1147, 86th Cong., 1st Sess. (1959). 1 Leg.Hist. 934.

the inference that Congress intended to provide for a jury trial when aggrieved individuals brought suit under the ADEA. *Id.* Similarly, it should be inferred that Congress intended to protect the right to a jury trial for Title I claims when it rejected a plan to place enforcement of Title I rights under the exclusive province of the Secretary of Labor.

If this Court agrees that the jury trial issue in this case can be resolved based on a fair interpretation of the statute itself, it need not reach the constitutional question, in compliance with the "cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided." *United States v. Thirty-seven Photographs*, 402 U.S. 363, 369 (1971), *quoted in Curtis v. Loether*, 415 U.S. 189, 192 n.6 (1974). Should this Court reach the constitutional question, however, the result is the same.

B. The Right To A Jury Trial Guaranteed By The Seventh Amendment Applies To Title I Actions

The Seventh Amendment provides that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." The Court long ago determined that the Seventh Amendment's jury trial guarantee is not limited to the common law forms of action recognized in 1791, but extends to "all suits which are not of equity and admiralty jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights." *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 447 (1830), *quoted in Curtis v. Loether*, 415 U.S. at 193.[5]

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[5] It is not dispositive, therefore, that the legal status of unions was, at best, uncertain in 1791. The regulation of labor in England began in (continued...)

The test developed by the Court for determining whether the Seventh Amendment protects the right to trial by jury of any particular issue was stated most recently in *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, ___ U.S. ___, 110 S.Ct. 1339 (1990):

> To determine whether a particular action will resolve legal rights, we examine both the nature of the issues involved and the remedy sought. "First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature." The second inquiry is the more important in our analysis.

Id. at 1345 (citations and footnote omitted).[6] Actions

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[5] (...continued)
1349 with the enactment of the Ordinances of Laborers, 23 Edw. 3, cc. 1,2 (1349), followed by the Statute of Laborers, 25 Edw. 3, ___ (1351), which regulated terms of labor contracts. Although unions were not specifically outlawed, combined action of workers was held to be a common law conspiracy in *Rex v. Journeymen Tailors of Cambridge*, 8 Mod. 10 (1721). In the United States, the first reported trike of workers occurred in 1741 and was apparently a spontaneous action. The Philadelphia Cordwainers, recognized as the first U.S. trade union, was organized in 1794. Adopting the English common law conspiracy theory, U.S. courts convicted Cordwainers' leaders of criminal conspiracy in 1806, as reported in Commons and Gilmore, *Documentary History of American Industrial Society*, vol. 3, 59-236 (1910). *See generally* Commerce Clearing House, *Labor Law Course* ¶¶500-01 (17th ed. 1967); Weyrauch, *Fundamentals of Labor Law* 2, 77 (2d ed. 1957); Gregory, *Labor and the Law* 13-30 (1946).

[6] A third consideration, not relevant here, is "whether Congress has permissibly entrusted the resolution of certain disputes to an administrative agency or specialized court of equity, and whether jury trials (continued...)

under Title I meet both parts of this test.

1. Actions Brought Under Title I Are Analogous To Actions At Common Law

Actions brought under Title I seek to enforce democratic rights granted by the statute. This Court has repeatedly held that actions to enforce statutory rights are subject to the right to a jury trial. *Lytle v. Household Mfg., Inc.*, ___ U.S. ___, 110 S.Ct. 1331 (1990)(Civil Rights Act); *Curtis v. Loether*, 415 U.S. 189 (fair housing laws); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962)(trademark laws); *Porter v. Warner Holding Co.*, 328 U.S. 395 (1946)(Emergency Price Control Act); *Texas & Pacific R. Co. v. Rigsby*, 241 U.S. 33 (1916) (Safety Appliance Act); *Hepner v. United States*, 213 U.S. 103, 115 (1909)(immigration laws); *Fleitmann v. Welsbach Street Lighting Co.*, 240 U.S. 27 (1916)(antitrust laws). Such actions are closely analogous to actions at common law and, thus, are protected by the Seventh Amendment's jury trial guarantee.

Curtis v. Loether, 415 U.S. 189, is particularly relevant. The question in *Curtis* was whether the Seventh Amendment applied to actions to redress violations of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3612. Answering that question in the affirmative, this Court extended its ruling beyond Title VIII, stating broadly: "The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordi-

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[6] (...continued)
would impair the functioning of the legislative scheme." *Granfinanciera, S.A. v. Nordberg*, ___ U.S. ___, 109 S.Ct. 2782, 2790 n.4 (1989). Congress explicitly granted jurisdiction of Title I claims to federal courts, not to any administrative agency or specialized court of equity, LMRDA §102, 29 U.S.C. §412.

nary courts of law." *Curtis, 415 U.S.* at 194. The *Curtis* Court also found: "A damages action under [Title VIII] sounds basically in tort -- the statute merely defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach." *Id.* at 195.

Actions under Title I of the LMRDA, like actions under Title VIII of the 1968 Civil Rights Act, also "sound[] basically in tort." Indeed, this Court has already held that the most closely analogous state court action to enforcement of Title I rights is an action for personal injury. *Reed v. United Transportation Union*, ___ U.S. ___, 109 S.Ct. 621 (1989).[7] The issue in *Reed* was the appropriate statute of limitations to be applied to Title I actions. The Court rejected the argument that LMRDA actions were like hybrid §301/duty of fair representation actions,[8] and declined to adopt the six-month federal statute of limitations applied to such hybrid actions in *DelCostello v. Teamsters*, 462 U.S. 151 (1983). Instead, the Court found that actions to enforce the free speech rights of union members under §101(a)(2) of the LMRDA were most closely analogous to actions to enforce constitutional rights under 42 U.S.C. §1983, which "are governed by state general or residual personal injury statutes of limitations. *Owens v. Okure*, [109 S.Ct. 573 (1989)]; *Wilson v. Garcia*, [471 U.S. 261 (1985)]. *See also Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987) (applying state personal injury statute to federal civil rights action against a private party brought under 42 U.S.C. §1981)." *Reed v. United Transportation Union*, 109 S.Ct. at 626-27.

[7] Much of modern day personal injury law has developed from the common law action for trespass on the case. *See Owens v. Okure*, ___ U.S. ___, 109 S.Ct. 573, 581 n.11 (1989). *See also* Plucknett, *A Concise History of the Common Law* 468-72 (1929).

[8] Individual employees may sue under §301 of the Labor Management Relations Act (LMRA), 29 U.S.C. §185, to enforce rights conferred on them by collective bargaining agreements between their employers and their unions. *Smith v. Evening News Ass'n*, 371 U.S. at 200. But the employee must exhaust contractual grievance procedures, including arbitration, before suit is filed, *Republic Steel v. Maddox*, 379 U.S. 650 (1965), unless the union breached its duty of fair representation in handling the grievance. *Vaca v. Sipes*, 386 U.S. 171 (1967); *Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976). A lawsuit in which an employee seeks to enforce both the collective bargaining agreement against the employer, and the duty of fair representation against the union, is known as a "hybrid" action.

While *Reed* dealt explicitly with §101(a)(2), its rationale applies with equal force to the other enumerated rights in Title I, all of which can be analogized to §1983 claims and the personal injury actions that they resemble. The right to equal participation in union affairs guaranteed by §101(a)(1) clearly has analogs in the Equal Protection Clause. The right to a secret ballot on dues and assessment increases, guaranteed by §101(a)(3), reflects at least penumbral rights under the First Amendment. The right of members to sue their union, §101(a)(4), and to procedural regularity in disciplinary proceedings, §101(a)(5), plainly derive from due process principles. In short, statutory enforcement actions under Title I flow just as directly from the common law as constitutional actions under 42 U.S.C. §1983, which are heard before juries on a daily basis in federal courts around the country.

2. Actions Under Title I Are Subject To The Seventh Amendment Right To Jury Trial Because Legal Remedies Are At Stake

Plaintiffs suing to enforce their rights under Title I of the LMRDA may seek actual, compensatory and punitive damages. These remedies are legal in nature, and therefore embraced by the jury trial guarantee of the Seventh Amendment.

The availability of money damages in Title I actions

is supported by both the broad statutory language and the case law construing it. The statute itself provides for "such relief (including injunctions) as may be appropriate." 29 U.S.C. §412. As this Court and other courts have recognized, the parenthetical reference to injunctive relief presumes the availability of money damages. Thus, in *Boilermakers v. Hardeman*, 401 U.S. 233 (1971), the Court rejected the union's argument that a Title I action seeking damages but no injunction should be dismissed. *Id.* at 239-40. Indeed, the Court observed that the statutory language "contemplates that damages will be the usual, and injunctions the extraordinary form of relief." *Id.* at 230.

Reflecting that view, the lower courts have granted monetary damages for a wide range of injuries in Title I suits. *See generally* M. Malin, *Individual Rights within the Union* at 123-29 (1988). For example, courts have awarded damages for lost wages, *Murphy v. Operating Engineers, Local 18*, 774 F.2d 114, 126 (6th Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986); *Shimman v. Frank*, 625 F.2d 80, 100 (6th Cir. 1980); *Ryan v. IBEW, Local 134*, 387 F.2d 778 (7th Cir. 1967). Courts have also awarded damages for physical injuries, if they are proximately related to a statutory violation. *Compare Shimman v. Frank*, 625 F.2d 80, *with McCraw v. Plumbers & Pipefitters*, 341 F.2d at 710. In addition, the weight of authority allows damages for injury to reputation, *Keeffe Bros. v. Teamsters, Local 592*, 562 F.2d 298, 304 (4th Cir. 1977); *Simmons v. Textile Workers, Local 713*, 350 F.2d 1012, 1019-20 (4th Cir. 1965); and for emotional distress, if accompanied by physical or economic injuries, *Guidry v. Operating Engineers, Local 406*, 882 F.2d 929, 943-44 (5th Cir. 1989); *Murphy v. Operating Engineers, Local 18*, 774 F.2d 114; *Bise v. IBEW, Local 1969*, 618 F.2d 1299, 1305 (9th Cir. 1979), *cert. denied*, 449 U.S. 904 (1980); *Bradford v. Textile Workers, Local 1093*, 563 F.2d 1138, 1144 (4th Cir. 1977).

Punitive damages were disallowed in some early cases, *McCraw v. Plumbers & Pipefitters*, 341 F.2d 705 (6th Cir. 1965); *Magelssen v. Plasterers, Local 518*, 240 F.Supp. 259 (W.D.Mo. 1965); *Burris v. Teamsters*, 224 F.Supp. 277 (W.D.N.C. 1963). However, since the Fifth Circuit's leading decision in *Boilermakers v. Braswell*, 388 F.2d 193 (5th Cir.), *cert. denied*, 391 U.S. 935 (1968), most circuits have allowed punitive damage awards under Title I, *Quinn v. DiGiulian*, 739 F.2d 637 (D.C.Cir. 1984); *Parker v. Steelworkers, Local 1466*, 642 F.2d 104 (5th Cir.), *reh'g denied*, 646 F.2d 567 (5th Cir. 1981); *Bise v. IBEW, Local 1969*, 618 F.2d 1299; *Vandeventer v. Operating Engineers, Local 513*, 579 F.2d 1373, 1380 (8th Cir.), *cert. denied*, 439 U.S. 984 (1978); *Cooke v. Painters, District 48*, 529 F.2d 815 (9th Cir. 1976); *Morrissey v. National Maritime Union*, 544 F.2d 19, 25 (2d Cir. 1976).[9]

Compensatory and punitive damages are remedies at law which require a jury trial on demand. *See Granfinanciera, S.A. v. Nordberg*, 109 S.Ct. at 2793-94; *Curtis v. Loether*, 415 U.S. at 196. The application of this principle to LMRDA cases is reinforced by the Court's recent decision in *Chauffeurs, Teamsters, and Helpers, Local 391 v. Terry*, 110 S.Ct. 1339, holding that plaintiffs in hybrid §301/duty of fair representation cases are entitled to a jury trial. If anything, the jury trial issue in *Terry* presented a much closer question than this case. The *Terry* Court found, nevertheless, that the Seventh Amendment required a jury trial on demand in duty of fair representation actions against a union even though the most

[9] In *IBEW v. Foust*, 442 U.S. 42 (1979), the Court held that punitive damages were not allowable in hybrid §301/duty of fair representation cases against unions. The majority expressly reserved decision on the availability of punitive damages under the LMRDA, *id.* at 47 n.9; four Justices, in concurrence with the result on the facts of *Foust* but in disagreement with an absolute rule denying punitive damages, explicitly approved of punitive damages in LMRDA actions.

closely analogous 18th century English action was an equitable claim against a trustee for breach of fiduciary duty. 110 S.Ct. at 1345-47.[10] Citing *Curtis v. Loether*, 415 U.S. at 196, the *Terry* Court emphasized that plaintiffs were seeking monetary relief and that "an action for money damages was 'the traditional form of relief offered in the courts of law.'" 110 S.Ct. at 1347.[11]

The remedy sought in the instant case is similar to that sought in *Terry*: wages and benefits lost because of the union's retaliatory discrimination in job referrals. Like *Terry*, these monetary damages, sought not from the employer as restitution but from the union as a proximate injury caused by the union's statutory violation, are legal in nature. And, like *Terry*, a union member seeking such damages pursuant to Title I is entitled to a jury trial under the Seventh Amendment.

The requirement for a jury trial in Title I cases is especially appropriate. Title I is intended to protect the basic democratic rights of members of labor unions. One of the basic democratic rights of citizens of our country is the right to a jury trial. Union members who

[10] Justice Marshall's opinion on this issue was joined by Chief Justice Rehnquist and Justices White and Blackmun. Justices Kennedy, O'Connor and Scalia, in a dissenting opinion, agreed with Justice Marshall that the most closely analogous 18th century English form of action was in equity but would have held that there was no right to a jury trial. Justice Stevens concurred with the result of the majority opinion but concluded that a duty of fair representation action was most closely analogous to an action at law for attorney malpractice. Justice Brennan concurred with the result of the majority opinion but focused on the nature of the remedy sought rather than the search for an analogous 18th century English form of action.

[11] The plaintiffs in *Terry* alleged that, due to their union's failure to represent them properly, they lost wages and benefits which they would have received from their employer. The Court held that, unlike backpay damages sought against an employer which may be equitable restitutionary relief, backpay damages sought from a union were not equitable but legal in nature. *Id.* at 1348.

seek to enforce the democratic guarantees provided by Title I are entitled to have their claims heard and decided by a jury.

II. FEDERAL COURTS HAVE JURISDICTION UNDER §301(a) OF THE LMRA OVER ACTIONS BROUGHT BY UNION MEMBERS TO ENFORCE UNION CONSTITUTIONS

A. Union Constitutions Can Be Enforced In Federal Court Under §301(a)

Union constitutions set the rules for governance of the union.[12] They describe officers' positions and their duties; they also set terms of office and election procedures. Constitutions regulate convention procedures, including the election of delegates eligible to vote at conventions. The relationship between the local and national or international organization, including trusteeship provisions, is defined in the union constitution. Membership duties, including dues obligations, are set forth in the union constitution. Grounds for discipline, and for trial and appeal procedures, may be found in the constitution. It may also contain other important provisions, regarding officers' salaries, union committees, the frequency of local union meetings, strike benefits, and contract ratification votes.

Section 301(a) of the LMRA, 29 U.S.C. §185(a), provides federal court jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affect-

[12] Generally, national and international unions are governed by "constitutions" and intermediate and local labor organizations are governed by "bylaws." Sometimes the terms are used interchangeably. To avoid confusion, the term "constitution" will be used herein to refer to the documents containing the rules governing all levels of union organization.

ing commerce as defined in this Act, or between any such labor organizations." The primary legislative purpose in enacting §301(a) was to "promote industrial peace." S.Rep. No. 105, 80th Cong., 1st Sess. 17 (1947), *reprinted in* NLRB, Legislative History of the Labor Management Relations Act 423 (1949)(hereinafter "LMRA Leg.Hist.").

In *Plumbers & Pipefitters v. Local 334*, 452 U.S. 615, the Court held that a local union could sue its parent organization under §301(a) to enforce the union's constitution, as a contract between labor organizations. The Court rejected the requirement, adopted by several lower courts at the time,[13] that §301(a) provided jurisdiction only over contracts which "potentially have a significant impact on labor-management relations or industrial peace . . . ." *Id.* at 623 (citation omitted). While acknowledging the significant interest in stability of labor relations, the Court noted an additional legislative purpose of §301(a):

> [A]pparently Congress was also concerned that unions be made legally accountable for agreements into which they entered among themselves, an objective that itself would further stability among labor organizations. Therefore, §301(a) provided *federal* jurisdiction for enforcement of contracts made by labor organizations to counteract jurisdictional defects in many state courts that made it difficult or impossible to bring suits against labor organizations by reason of their status as unincorporated organizations.

[13] *Alexander v. Operating Engineers*, 624 F.2d 1235, 1238 (5th Cir. 1980); *Stelling v. IBEW*, 587 F.2d 1379 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979); *Hospital & Health Care Employees, Local 1199 DC v. Hospital & Health Care Employees*, 533 F.2d 1204 (D.C.Cir. 1976).

Id. at 624 (emphasis in original).[14]

These two legislative purposes, promoting industrial stability and holding unions accountable for the agreements they have made, were found to be complementary: "Surely Congress could conclude that the enforcement of the terms of union constitutions -- documents that prescribe the legal relationship and the rights and obligations between the parent and affiliated locals -- would contribute to the achievement of labor stability." *Id.* Thus, the *Plumbers* Court did not require further proof that enforcement of a particular constitutional provision would have an additional impact on labor stability beyond that inherent in enforcing union constitutions.

Acknowledging that "there is no specific legislative history on [the] phrase ["contracts between labor organizations"] to explain what Congress meant," *id.* at 623, the Court found that union constitutions were familiar to Congress when it enacted §301(a), and that the broad inclusive language of §301(a) did not exclude constitutions from the general term "contracts." *Id.* at 625. Thus, the Court held that since the statute on its face encompassed union constitutions, and there was no indication of a countervailing legislative intent or purpose, actions for violation of union constitutions are subject to federal court jurisdiction under §301(a).[15]

[14] Congress was concerned that unions were not legal entities under the common law of many states. Thus, some states required service on each member of the union in order to initiate a lawsuit; some states did not enforce damage awards against union funds. *See Plumbers*, 452 U.S. at 624. *See also* S.Rep. No. 105, *supra*, at 15-18; H.R.Rep. No. 245, 80th Cong., 1st Sess. 108-09 (1947). 1 LMRA Leg. Hist. 399-400.

[15] Even before *Plumbers* was decided, numerous state courts had characterized union constitutions as enforceable contracts between labor

(continued...)

In addition, *Plumbers* rejected the argument that allowing suits in federal court for violations of union constitutions would result in undue interference with the internal affairs of the unions. *Id.* at 625-26. First, when Congress enacted the LMRDA in 1959, it imposed stringent requirements on the governing processes of unions and voided any conflicting constitutional provisions.[16] Second, as this Court emphasized in *Plumbers*, "[t]here is an obvious and important difference between substantive regulation by the National Labor Relations Board of internal union governance of its membership, and enforcement by the federal courts of freely" enacted union constitutions. *Id.* at 626. That same distinction applies with equal force here.

B. Union Members May Sue Under §301(a) For Violations Of Union Constitutions

The Court in *Plumbers* expressly declined to decide whether "individual union members may bring suit on a union constitution against a labor organization." 452 U.S. at 627 n.16. The courts of appeals have split on the issue although, since *Plumbers*, the weight of authority favors finding federal jurisdiction for such suits.[17]

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[15] (...continued)
organizations. *See, e.g., Napier v. Firefighters, Local 2*, 293 N.E.2d 384, 386 (Ill. 1973); *Elfer v. Marine Engineers*, 154 So. 32, 35 (La. 1934); *Clothing Workers v. Kaser*, 6 S.E.2d 562, 564 (Va. 1939). *See also Machinists v. Gonzales*, 356 U.S. 617, 619 (1958). *See generally* Summers, "The Law of Union Discipline: What the Courts Do in Fact," 70 Yale L.J. 175, 179 (1960).

[16] Section 101(b) provides: "Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect," 29 U.S.C. §411(b). *See* Ross and Taft, "The Effect of the LMRDA upon Union Constitutions," 43 N.Y.U.L.Rev. 305 (1968).

[17] *Compare Desantiago v. Laborers, Local 1140*, 914 F.2d 125 (8th Cir. (continued...)

In *Smith v. Evening News Ass'n*, 371 U.S. 195, this Court held that individual employees could sue for breach of a collective bargaining agreement between a union and employer even though the employee is not a party to the contract. The Court treated employees, whose "rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts," *id.* at 200, as third party beneficiaries of the contract entitled to sue under §301 (a) for enforcement.

Applying the same reasoning, the Third Circuit has held that §301(a) authorizes suits by individual union members seeking enforcement of union constitutions: "If individual union members are third party beneficiaries of collective bargaining agreements, it follows that they have the same status with respect to union constitutions .... If third party beneficiaries of the one agreement can sue in federal court, then so can third party beneficiaries of the other." *Lewis v. Teamsters, Local 771*, 826 F.2d at 1314.

In similar fashion, this Court has "not taken a restrictive view of *who* may sue under §301(a)," *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 25 n.28 (1982). Suits have been allowed by a union against third parties for tortious interference with a collective bargaining agreement, *Plumbers Local 472 v. Georgia Power Co.*, 684 F.2d 721 (11th Cir. 1982); *Wilkes-Barre Publishing Co. v. Newspaper Guild, Local 120*, 647 F.2d 372 (3d Cir. 1981), *cert. denied*, 454 U.S.

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[17] (...continued)
1990); *Pruitt v. Carpenters, Local Union No. 225*, 893 F.2d 1216 (11th Cir. 1990); *Lewis v. Teamsters, Local 771*, 826 F.2d 1310 (3d Cir. 1987); *Kinney v. IBEW*, 669 F.2d 1222 (9th Cir. 1981); *Abrams v. Carrier Corp.*, 434 F.2d 1234 (2d Cir. 1970), *cert. denied*, 401 U.S. 1009 (1971); *with Alexander v. Operating Engineers, 624 F.2d 1235*; *Trail v. Teamsters*, 542 F.2d 961; *Adams v. Boilermakers*, 262 F.2d 835 (10th Cir. 1958). *See generally* M. Malin, *supra*, at 9-12.

1143 (1982); by trustees of a pension trust agreement incorporated into the collective bargaining agreement, *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364 (1984), and by a union against a nonsignatory joint committee established to administer a contract, *Painting & Decorating Contractors Ass'n v. Painters & Decorators Joint Committee*, 717 F.2d 1293 (9th Cir. 1983), *cert. denied*, 466 U.S. 927 (1984). *See generally* Bureau of National Affairs, *The Developing Labor Law* 435-38 (1989).

Furthermore, the legislative purposes of the LMRA support conferring federal court jurisdiction on suits to enforce union constitutions whether brought by union members or unions. One of the stated purposes of the LMRA, set forth in §1(b), is "to protect the right of individual employees in their relations with labor organizations." §1(b), 29 U.S.C. §141(b). Relations between members and their unions are defined primarily by the union constitution. Although the legislative history of §301(a) does not refer to union constitutions, it is certainly reasonable to assume that one of the means by which Congress intended to protect the rights of individual union members was to provide for federal court jurisdiction of suits for violations of union constitutions. *Cf. Plumbers*, 452 U.S. at 624-25.[18]

Finally, allowing union members to sue in federal court for violations of union constitutions will promote judicial efficiency. Lawsuits brought by union members challenging union actions may raise a variety of claims under the LMRDA, the union constitution, and the duty

[18] The jurisdictional barriers to successful litigation against union defendants in effect in many states when the LMRA was adopted, *see* n.13, *supra*, applied whether the lawsuit was brought by an employer seeking to enforce a collective bargaining agreement or a union member seeking to enforce a union constitution. In fact, such requirements fell more heavily on union members who had fewer resources for litigation than most employers.

of fair representation. The facts of the instant case are prototypical: petitioner claims the union discriminated against him in job referrals. He alleges violations of the LMRDA, the duty of fair representation and the union constitution. It would be far more efficient to resolve all the claims in one forum, rather than requiring petitioner to pursue his claims under the union constitution in a separate state court action.

CONCLUSION

For the reasons stated above, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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